XIII 10

The powers, duties and liabilities of executive officers. By A. W. Chaster 1887

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THE POWERS, DUTIES, AND LIABILITIES OF EXECUTIVE OFFICERS,

S BETWEEN THESE OFFICERS AND THE PUBLIC.

BY

A. W. CHASTER,

UNIVERSITY OF LONDON, LL.B.; AND OF THE MIDDLE TEMPLE AND WESTERN CIRCUIT, BARRISTER-AT-LAW.

"Quis custodiet ipsos
Custodes?"
—Juv. Sat. vi.

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THE POWERS,

DUTIES, AND LIABILITIES

OF

EXECUTIVE OFFICERS

AS BETWEEN THESE OFFICERS AND THE PUBLIC.

INTRODUCTION.

N executive officer, properly so called, is, I assume, an ficer employed by the State to put into actual execution e laws, or some portion of the laws, of his country. Taking s as the definition upon which this work is based, it is atural consequence that the following officers, all of iom come within the term "executive" in its wide sig- fication, are not included within it. First, military and val officers, who act under the orders of their com- ander, and who in ninety-nine cases out of a hundred e employed actively, outside the country, to deal with ose foes whom it is to our interest politically to force o submission. Secondly, judicial officers, whose duty it to interpret the laws, statutory or otherwise, but who e not themselves personally engaged in putting the laws nto active operation. Thirdly, those officers whose busi- ess it is to perform purely ministerial functions and none uch as those in the ordinary clerical establishments

of our great public departments and the like, and w never, under any circumstances, come into collision, their official capacities, with any member of the public.

Having thus positively and negatively determin shortly, what I mean in this work by "executive office I would observe that the powers which are exercised these men, when considered in the aggregate, are enormo They, in fact, carry on between them the whole busin of active government in this country, and when we member that every single case, either of excess of pow or breach of duty towards any member of the public, co tains within it as its kernel the all-important questi of the rights and liberties of the people, it will be se that it is impossible to over-rate the necessity of close scrutinizing their labours. Professor Dicey, in his al work on the Constitution (p. 33), in this connecti says as follows:—"Unintelligent students may fan that the law of the constitution is to be gathered on from notorious judgments which embalm the results grand constitutional or political conflicts. This is not Scores of unnoticed cases . . . touch upon or deci principles of constitutional law. Indeed every acti against a constable or collector of revenue inforces t greatest of all such principles, namely that obedience administrative order is no defence to an action or pr secution for acts done in excess of legal authority."

It is impossible, having regard to the fallibility human nature and the system of administration, to suppo that these officers are invariably in the right, or even t credit them on all possible occasions with purity o motive. Over-zeal for the public service and individua interest will, in spite of all precautions, from time to tim exhibit themselves. It is against such exhibitio

is work is mainly directed. At present there would ppear to be nothing like a direct exterior check upon he powers of these officers, and the natural tendency herefore is—no matter how carefully any system may be dministered—not only for these men to exalt their nctions as between themselves and the public, but also them to become a danger of no petty magnitude to e community.

It is for these reasons that this work has been prepared. object is to furnish the profession and the public with book of reference from which may be ascertained at a ance (practically speaking) what these officers have the wer to do, and what not to do, as against any member the public, and what remedies are pursuable in case the cer has either exceeded his power or fallen short of his y to the individual. It is conceived, therefore, that it not fail to be of interest and value.

The liberties of the people of this country have, it must t be forgotten, been purchased with the blood and asure of our ancestors, and have been maintained by mental and physical labours of thousands of earnest d good men who have preceded us. To preserve those erties intact is both the right and duty of us all.

That this work may, in some humble degree, minister that end, is the prayer of the author.

PART I.

OFFICERS OF PARLIAMENT.

HOUSE OF LORDS.

The Serjeant-at-Arms and Officers of the House

Serjeant-at-arms and his officers.

The duly constituted officer of the House of Lords f executive purposes is the serjeant-at-arms. He is assist by a deputy-serjeant, doorkeepers, messengers, and su constables sworn for the Royal Palaces (*a*) as may f the time being be in attendance on the House.

The duty of the serjeant-at-arms is to execute t orders of the House for the attachment of delinquen when they are in the country. (*b*)

In the 12th Car. 1, the House resolved that it " served to itself the power of employing whom it thoug fit for sending for delinquents and keeping them in sa custody." (*c*)

Committal of persons.

The Lords attach and commit persons by order witho any warrant. The order of the House is signed by tl clerk of the parliaments, and is the authority und which the officers of the House and others execute the duty. (*d*)

Construction of order.

If the officer should not exceed his authority, he wi presumably, be protected by the Courts, even if th order under which he acts should not be technicall

(*a*) 2 & 3 Vict. c. 47, s. 7. (*b*) May, Parl. Prac. 9th ed. p. 256.
(*c*) Macq. H. L. 69. (*d*) May, p. 89.

rmal, according to the rules by which the warrants of perior Courts are tested. (*a*)

The power of the serjeant to break doors is, it is pre- med, as great as that of the serjeant in the House of ommons. (*b*) Breaking doors.

The House may adjudge any act a breach of privilege nd contempt; and if the order recite that the prisoner be arrested has been guilty of a breach of privilege, e Courts of law cannot inquire into the grounds of the gment, but must leave him to suffer the punishment rded by the High Court of Parliament by which he nds committed. (*c*)

If however, the causes of commitment are stated on the ler and appear to be beyond the jurisdiction of the use, it is probable that their sufficiency would be mined. (*d*) But it is not necessary that *any* cause of mitment should be so stated, nor that the prisoner uld have been adjudged guilty of contempt. (*e*)

The House has always considered every branch of the l government bound to assist, when required, in ecuting their orders and has repeatedly required such istance. (*f*) Civil authorities to assist.

The House will not suffer any person, whether officers others, to be molested for executing their orders (*g*) or e orders of a Committee (*h*), and will protect them from ions. Any such molestation will be treated as a con- npt. (*i*) Protection of officers.

In *Hesse's Case* (*k*) the plaintiff was attached by the

(*a*) *Cf. Howard* v. *Gosset* (2) *post*, p. 8. (*b*) *Vide infra*, p. 8.
(*c*) May, p. 82.
(*d*) *Burdett* v. *Abbott*, 14 East, 1. (*e*) May, p. 89.
(*f*) May, p. 77. (*g*) 13 Lords' Jour. 104.
(*h*) 13 Lords' Jour., 142. (*i*) 19 *Ib.* 366. 20 *Ib.* 185.
(*k*) 32 *Ib.* 187.

House for proceedings against a justice of the peace who had acted under the immediate orders of the House in suppressing a riot in Palace-yard. Mr. Hyde was committed (*a*) for indicting one Aldern for an assault committed on him when refusing him admittance to Westminster Hall in pursuance of orders. Mr. Bell having brought an action against the doorkeeper for the loss of his umbrella while the doorkeeper was on duty, was summoned by the House and admonished. (*b*)

Serjeant's liability for act of officer.

It is presumed that the serjeant-at-arms is not liable (except as regards his deputy) for the acts or defaults of his subordinates. He is, it would seem, rather the officer of the Lord Chancellor than of the House (*c*) while the subordinates seem rather to be officers of the House than of the Lord Chancellor. Any breach or excess of duty therefore, on the part of such subordinate would apparently expose him to personal liability, subject of course to the protection afforded by the House above stated.

Personal liability of subordinate.

(*a*) 38 Lords' Jour. 249.
(*b*) *The Umbrella Case*, 59 Lords' Jour. 199. (*c*) May, p. 256.

HOUSE OF COMMONS.

The Serjeant-at-Arms and his Officers.

Serjeant-at-arms and his officers.

As in the Lords, so in the Commons, the duly consti-ed officer for executive purposes is the serjeant-at-ns. His subordinates are a deputy and an assistant-jeant, doorkeepers, messengers and such constables orn for the Royal Palaces as are for the time being in tendance on the House. (*a*)

His duties.

The duty of the serjeant-at-arms is to execute the ders of the Speaker either by warrant or by virtue of e general orders of the House. If strangers intrude emselves into the House, or otherwise misconduct mselves, he has the power to take them into custody, virtue of such general orders and without any specific tructions. (*b*)

Committal of persons.

The House may adjudge any act a breach of privilege l contempt; and if the warrant recite that the person be arrested has been guilty of a breach of privilege, the ourts of law cannot enquire into the grounds of the dgment, but must leave him to suffer the punishment arded by the High Court of Parliament, by which he ands committed. (*c*) If, however, the causes of commit-ent are stated on the warrant and appear to be beyond ie jurisdiction of the House, it is probable that their fficiency would be examined. (*d*) But it is not neces-ary that *any* cause of commitment should appear upon he warrant, nor that the prisoner should have been djudged guilty of contempt. (*e*)

(*a*) 2 & 3 Vict. c. 47, s. 7. (*b*) May, p. 89. (*c*) May, p. 82.
(*d*) *Burdett* v. *Abbot*, 14 East, 1. (*e*) May, p. 88.

Civil authorities to assist.

The House has always considered every branch of th civil government bound to assist when required in execut ing their warrants and has repeatedly required such assistance. (*a*)

Construction of warrant.

If the officer should not exceed his authority he will be protected by the Courts even if the warrant under which he acts should not be technically formal according to the rules by which the warrants of superior Courts are teste for the officers ought not to examine the judicial act of th Court whose servants they are, nor exercise their judgme touching the validity of the process in point of law, but a bound to execute it and are therefore protected by it. (*b*)

Speaker's jurisdiction.

The Speaker's warrant can, it is submitted, be execute only within the limits of the United Kingdom.

Breaking doors.

The power of the serjeant to break open outer doo was discussed in *Burdett* v. *Coleman*. (*c*) Lord Ell borough there said:—"Upon authorities the most u questionable, this point has been settled that where injury to the public has been committed in the sha of an insult to any of the Courts of Justice on wh process of contempt is issued, the officer charged wi the execution of such process may break open doors necessary in order to execute it: and it cannot be co tended that the houses of legislature are less strong armed in point of protection and remedy against co tempts towards them than the courts of justice are This judgment was affirmed in the House of Lords. (*d*)

Continuing on premises.

He is not however authorized in remaining inside th house more than a reasonable time sufficient to execute the warrant. (*e*)

(*a*) May, p. 77.
(*b*) *Howard* v. *Gosset* (2), 10 Q. B. 359. (*c*) 14 East, 157.
(*d*) 5 Dow. 165. (*e*) *Howard* v. *Gosset* (1), Car. & M. 382.

Warrant of chairman of committee.

The rules above stated in regard to warrants have been held to apply as fully to cases arising under warrants of a chairman of a Committee of the House. (*a*)

Protection of officers.

The House has always treated as a contempt any resistance to the serjeant-at-arms or his officers or others acting in execution of the orders of the House, the parties have, in numerous instances, been shed accordingly. (*b*)

hus in *Miller's case* (*c*) the Lord Mayor was sent the Tower for committing the messenger of the use, acting under the Speaker's warrant, for assault. another occasion the sheriffs of London were ilarly committed for resisting the serjeant-at-arms. (*d*) ere an action had been brought against the serjeant- rms for executing the orders of the House in arresting ain persons, he pleaded to the jurisdiction of the rt, but his plea was overruled and judgment given nst him. The House declared this to be a breach privilege, and committed Sir F. Pemberton and T. Jones, who had been judges in the case, to the tody of the serjeant. (*e*)

Acting in execution of orders.

f the serjeant act strictly in pursuance of his orders, plea that he has done so will be a good defence. us in *Bradlaugh* v. *Erskine* (*f*), to a claim for mages for an assault committed on the plaintiff, a mber of parliament, whilst attempting to enter the use of Commons for the purpose of taking his seat, fendant pleaded in justification thereof, that the House d previously resolved and ordered that the defendant ould "remove plaintiff from the House until he should

(*a*) *Lines* v. *Russell*, 19 L. T. 364.
(*b*) May, p. 75.
(*c*) May, p. 77.
(*d*) 1 Hats. Pr. 53.
(*e*) *Topham's Case*, T. Jones Rep. 208.
(*f*) 47 L. T. 618.

engage no further to disturb the proceedings of the House," and that, acting in pursuance of such order defendant resisted and removed plaintiff. It was held on demurrer that the plea was good.

Serjeant's liability for act of officer.

The serjeant is, it is presumed, liable for the acts or defaults of his subordinate officers, either where the done or omitted is within the ordinary scope of officer's employment, or where he elects subsequentl ratify the act done, or omitted, in accordance with usual rules governing the law of tort in such matters.[b]

Personal liability of officer.

Such liability, however, on the part of the serjea would not apparently exonerate the officer in cases whe he has committed either a breach or excess of duty. (This subject will be found discussed more fully *in* Part VII. (*c*)

(*a*) *Cf. Laugher* v. *Pointer*, 5 B. & C. 547.; *Wilson* v. *Ba* 4 B. & Ad. 614, and *post*, p. 296.

(*b*) *Cf.* remarks of Lord *Westbury*, C., in *Cullen* v. *Thom Trustees*, 4 Macq. Sc. App. Ca. 433.

(*c*) P. 293.

PART II.

OFFICERS OF THE COURTS OF LAW.

HE SHERIFF AND HIGH BAILIFF AND THEIR OFFICERS.

The Sheriff.

The sheriff.

sheriff is bound to execute process issuing from High Court of Justice, and in this function he is dered as an officer of the Court. In civil causes, osing the case to be such that an order issues for the t and imprisonment of the defendant under the isions of the Debtors Act, 1869, in order to prevent quitting England and so prejudicing the plaintiff in prosecution of his action, he is to effect the arrest, take the prescribed security that he will not leave gland without leave of the Court; and in any action en determined, he must see the judgment of the Court ied into execution, and in these matters he is liable, e other ministerial officers, to an action for the neg- ent or improper discharge of his duty at the suit of e party grieved. (*a*)

Outgoing sheriff, duty of.

By 3 & 4 Will. 4, c. 99, s. 7, the outgoing sheriff is

(*a*) Stephen's Commentaries, 8th ed. ii., 631; and see *Hooper* v. *ne*, post, p. 37.

required to hand over to his successor a list of writs processes and judgments in his hands, "and in case any sheriff shall refuse or neglect at the expiration of h office to make out, sign, and deliver such list and accou as aforesaid, and to turn over the processes aforesaid manner aforesaid, every such sheriff, so neglecting refusing, shall be liable to make such satisfaction damages and costs to the party grieved as he shall they may sustain by such neglect or refusal."

The sheriff's officers are the under-sheriff and bailiffs

The Under-Sheriff.

Under-sheriff.

The duties of the under-sheriff are to execute those the sheriff in his executive capacity. He must "rece all manner of writs in any place and at all ti within his county when and wheresoever they be delivered to him, without taking anything o than such fees as the law alloweth, and shall make the warrant." (*a*)

Liability of under-sheriff.

The under-sheriff is not liable for any neglect of d nor will an action lie against him for any default in hi For all such neglect or default the sheriff is hims responsible. (*b*)

Where, however, the sheriff is dead, and the unde sheriff is acting for him under 3 Geo. 1, c. 15, s. 8, would appear that he is liable to all intents and pu poses as if he were the high sheriff. (*c*)

By 3 & 4 Will. 4, c. 99, s. 9, the under-sheriff relieved from personal responsibility for any money received by a deceased sheriff.

(*a*) Impey, Sh. p. 41. (*b*) *Cameron* v. *Reynolds*, Cowp. 406.
(*c*) *Gloucester Banking Co.* v. *Edwards*, 83 L. T. (N) 190.

The under-sheriff is, however, personally liable criminally for acts unauthorized by the sheriff, and also for portion committed by him. (*a*) In such cases the riff is not responsible. (*b*)

(*a*) *Hescott's Case*, 1 Salk. 330. (*b*) *Laicock's Case*, Lat. 187.

The Bailiff.

The bailiff.

Bailiffs are of three kinds, namely, special bai bound bailiffs, and bailiffs of liberties.

Special bailiff.

A special bailiff is a bailiff appointed by the sheriff the execution of a particular writ at the instance of execution creditor or some other person similarly terested, or his agent.

Effect of appointment of.

The effect of the selection of such a bailiff is to reli the sheriff from responsibility to the party at w instance he was appointed. (*a*)

How constituted.

What constitutes a special bailiff is matter of evid in each particular case. (*b*) Where a debtor whose g had been seized under a writ of *fi. fa.* persuaded the of executing the writ not to advertise the sale and interf to prevent the issue of the bills and on the day of sale his agent induced the officer to postpone it to a hour, and the officer proceeding to sell, he directed hi sell also for a writ that day lodged against him and u which he could not otherwise have sold, and in management of the sale the officer conducted him negligently in not properly lotting the goods which w consequently sold at an undervalue, it was held t these facts did not constitute the officer the agent of execution debtor so as to absolve the sheriff from liabil for the officer's negligence in the conduct of the sale. And a mere request that a particular officer may

(*a*) *Pallister* v. *Pallister*, 1 Chit. 614.

(*b*) *Ford* v. *Leche*, 6 Ad. & El. 699.

(*c*) *Wright* v. *Child*, L. R. 1 I 358.

ployed in the execution of the process was held not to nstitute that officer a special bailiff of the party so as discharge the sheriff. (*a*)

Bound bailiff.

A bound bailiff is the bailiff usually employed by e sheriff. He is called a bound bailiff because he es the sheriff a security for the due performance of his ies.

Process directed to the bailiff personally in the first ance is void. (*b*)

Sheriff's liability for acts of bailiff.

With respect to the bailiff the position of the sheriff is liar. The bailiff is the warrant officer of the sheriff, the sheriff is not only liable for the acts of the bailiff under the warrant (*c*), but also for any mistake or nduct committed in the course of the execution. (*d*) no defence for the sheriff to say that his orders were tended to. He still remains liable provided the act lained of be one which the officer was bound to do acting in execution of the sheriff's orders. (*e*) It is ecessary to shew an actual recognition by the sheriff acts of the bailiff. (*f*)

Receipt of money by bailiff.

heriff's officer who arrested a person on a bailable s was held not bound to receive the money (the nt of the debt and costs indorsed on the writ); but received it, he did so on behalf of the sheriff and sheriff was liable for it to the plaintiff. (*g*) If a f's officer take money from a person under colour of fice for anything done in the course of his duty and

Corbet v. *Brown*, 6 D. P. C. E. 568.

Grant v. *Bagge*, 3 East, 588.

Crowder v. *Long*, 8 B. & C. 309.

) *Smart* v. *Hutton*, 8 A. & P. 213.

(*e*) *Smith* v. *Pritchard*, 8 C. B.

(*f*) *Sanderson* v *Baker*, 3 Wils.

(*g*) *Woodman* v. *Gist*, 8 C. &

to which money he is not entitled by law, an action l against the sheriff, although there is no evidence of t money coming to his hands. (*a*)

Bailiff's assistant.

Where the bailiff to whom the sheriff had given warrant to execute a *fi. fa.* sent an assistant to execute in his absence, which was done, the sheriff was h answerable for this act as being done by colour of warrant. The judgment debtor paid the amount at office of the bailiff who held the warrant in the abse of the bailiff whose assistant had been authorized receive the money. The assistant neglected to pay over, and the sheriff never in fact received the mo A payment under such circumstances was held goo against the sheriff and satisfied the writ. (*b*)

Criminal liability.

There is no liability criminally on the part of sheriff for the acts of the bailiff. (*c*)

Laibility of bailiff.

If a sheriff return the answer of the bailiff which pr to be false, an action lies against the bailiff and against the sheriff for the false return. (*d*) Whe telegram purported to be sent by solicitors in Lo giving notice of the granting of an injunction to re the sale under an execution during the sale, a she officer who was not himself present at the sale, and had no actual notice of the injunction, was held responsible for the act of his deputy, who allowed sale to be continued after receiving notice of telegram. (*e*)

Partnership of bailiffs.

The better opinion seems to be that there can b

(*a*) *Jones* v. *Perchard*, 2 Esp. 507.

(*b*) *Gregory* v. *Cotterell*, 5 El. & Bl. 571.

(*c*) *Sanderson* v. *Baker*, 3 Wils. 309.

(*d*) *Jackson* v. *Hill*, 10 A El. 477.

(*e*) *Ex parte Langley*, 13 Ch 110.

rtnership between bailiffs, so as to render one partner ble for the acts or defaults of the other. (*a*)

Bailiffs of liberties.

A liberty is a district in regard to which grants have en anciently made by the Crown to individuals, con- ring on them or their bailiffs the exclusive privilege of ecuting legal process therein. (*b*)

Westminster and Pontefract are instances of such rties.

he sheriff must enter the liberty to execute the writ never it contains the *non-comittas* clause. (*c*)

he powers, duties, and liabilities of a bailiff of a liberty similar to those of a bound bailiff.

Jones v. *Perchard*, 2 Esp. 507; but see *Brunswick* (*Duke of*) v. *an*, 8th C. B. 317.

Steph. Comm. 8th ed. p. 632.

Carrett v. *Smallpage*, 9 East, 330.

Execution of Writs.

Sheriff's duty to execute.

By 1 Stat. 13 Ed. 1, c. 39, sheriffs are required execute the King's writs; and if they fail to do so, an action be brought thereupon, "damages shall awarded to the plaintiff having respect to the qu and quantity of the action and to the peril that n have come to him by reason of the delay that sustained." Sheriffs and bailiffs are bound to exe the writs delivered to them, and it is sufficient for purpose for them to shew the writ under which act. (*a*)

Writ a sufficient authority.

The sheriff's duties, shortly, are these,—first, mediately on receipt of the writ, to institute enquiry touching the debtor's position and pro means of discharging the debt, and second, to e it as soon as he reasonably can. If he fails in ei these particulars, he renders himself liable in da to the creditor suing out the writ, if the position o creditor is thereby prejudiced. (*b*)

The fact that the execution creditor has a judg in his favour against the debtor is sufficient to giv an interest in the writ, and to create a duty on th of the sheriff, the neglect of which would confer o execution creditor a good cause of action. (*c*) The no corresponding duty, however, on the part o

(*a*) *Cotes* v. *Michill*, 3 Lev. 20.

(*b*) *Mason* v. *Paynt* 981.

(*c*) *Jones* v. *Pope*, 1 Saund. 38 b.

to give information or assistance to the sheriff enable him to perform his duty. (*a*)

Delaying execution.

The sheriff is bound to execute the writ within a asonable time after it has been delivered to him, therwise he will be liable to an action by the person ning it out. (*b*) The lessor of the plaintiff in ejectment aving recovered judgment against the casual ejector, tained a writ of *habere facias possessionem* and delivered warrant to the sheriff's officer to be executed. The riff having received notice that the landlord of the endant intended to apply to set aside the proceedings irregularity, his officer did not execute the possession, the proceedings were afterwards set aside by a e's order found for irregularity, the landlord being to plead on payment of costs. The sheriff had not ruled to return to the writ. The lessor of the iff had incurred expense before the judgment was side in endeavouring to get the writ executed, which se the Master refused to allow on taxation. Upon facts the lessor of the plaintiff was held entitled to er this expense in an action against the sheriff for ing to execute the writ. (*c*)

Seizure.

e sheriff must on seizure leave a man in possession he sale takes place (*d*), which must be within a reason- time. (*e*) The goods taken must belong to the n named in the writ. (*f*) A seizure of part in the of the whole is good. (*g*) The sheriff must at his

(*a*) *Dyke* v. *Duke*, 4 Bing. N. C. 703.

(*b*) *Clifton* v. *Hooper*, 6 Q. B. 468.

(*c*) *Mason* v. *Paynter*, 1 Q. B. 974.

(*d*) *Blades* v. *Armidale*, 1 M. & S. 711.

(*e*) *Bates* v. *Wingfield*, 2 N & M. 831.

(*f*) *Glasspoole* v. *Young*, 9 B. & C. 696.

(*g*) *Gladstone* v. *Padwick*, L. R. 6 Ex. 203.

peril seize the goods of the party against whom the issues. (*a*)

Void execution.

By 29 Car. 2, c. 7, s. 6, execution on Sunday is d clared void, and the person executing the same is " liable to the suit of the party grieved, and to answe damages to him for the doing thereof as if he had do the same without any writ, process, warrant, ord judgment or decree at all."

By 25 & 26 Vict. c. 89, s. 163, where any company being wound up by the Court, or subject to the su vision of the Court, any attachment, sequestration, tress or execution put in force against the estate effects of the company after the commencement of winding-up shall be void to all intents. [Excep leave of the Court. (*b*)]

Writ.

The two writs most usually employed in executi those of *fieri facias* and *elegit*. Besides these the a number of others which are, however, rarely used.

By 46 & 47 Vict. c. 52, s. 146, a writ of *el* stated not to extend to goods. Since this enactm writ of *elegit* can, *semble*, be used only for suing execution on lands, and a writ of *fieri facias* for exec on goods. (*c*)

Renewed writ.

A renewed writ takes effect from the date o original delivery thereof. (*d*)

To agree with judgment.

A writ must agree with the judgment in the m tory part. (*e*)

Priority.

Where more than one writ in regard to the debtor comes to the hands of the sheriff for execu he is bound to pay strict attention to the order of

(*a*) Per Parke, B.: *Glasspoole* v. *Young*, *ubi sup.*
(*b*) s. 87. (*c*) *Vide* Ord. xlii. r. 17.
(*d*) Ord. xlii. r. 20. (*e*) *Webber* v. *Hutchins*, 8 M. & W. 31

hich they are by him received. (*a*) If, however, he irected not to execute a writ until a future day, he y execute another delivered before that day. (*b*) If r execution and satisfaction of the first writ there be urplus, this must be applied to the satisfaction of the ond writ, and so on. (*c*)

The sheriff will not of course proceed to execute a writ re there is a countermand. So long as the counter- nd is in his hands and is not withdrawn, his liability on the writ wholly ceases. On the withdrawal of the ntermand, the writ again becomes of full force and ct, and the liability of the sheriff in regard to the ution is reimposed from that moment. (*d*) Countermand.

either the debtor or creditor die after the issue and e the execution of the writ, the title of the creditor s representatives to the goods taken will not thereby fected. (*e*) Death of debtor. —— of creditor.

e sheriff's power to break doors varies with the ular writ which he may happen to have to execute e time. The subject is therefore discussed under eading of each writ, *infra*. Breaking doors.

the original entry is unlawful and an act of trespass, continuance there is also unlawful, and the sheriff ot avail himself of such entry or possession to ex- e a writ. (*f*)

f the sheriff continues in possession after the return of the writ, that irregularity makes him a trespasser Continuing in possession.

(*a*) *Dennis* v. *Whetham*, L. R. 9 Q. B. 345.
(*b*) *Kempland* v. *Macaulay*, Peake's N. P. C. 66.
(*c*) *Aldred* v. *Constable*, 6 Q. B. 370.
(*d*) *Hunt* v. *Cooper*, 12 M. & W. 672.
(*e*) *Ranken* v. *Harwood*, 10 Jur. 794.: *Thoroughgood's Case*, oy. 73.
(*f*) *Hooper* v. *Lane*, 6 H. L. C. 535.

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ab initio, but will not support the allegation of a trespass by him after the acts which he justifies un the execution. (*a*) Continuing on premises more than reasonable time, or beyond the time allowed by law good ground for an action of trespass. (*b*) The she cannot justify remaining an unreasonable time on premises. (*c*)

Justification.

An order having been made by a judge, no action trespass lies against the sheriff or any one lawfully act in his aid, for acts done in pursuance of the order. As long as a judgment exists, it protects those who s property under an execution founded on it; and if judgment and execution are set aside, no action against the sheriff for anything he did under it wh remained in existence. (*e*)

(*a*) *Aitkenhead* v. *Blades*, 5 Taunt. 198.
(*b*) *Ash* v. *Dawnay*, 8 Ex. 237.
(*c*) *Playfair* v. *Musgrove*, 14 M. & W. 239.
(*d*) *Brown* v. *Watson*, 23 L. T. 745.
(*e*) *Ives* v. *Lucas*, 1 C. & P. 7.

FIERI FACIAS.

Fieri facias.

he writ of *fieri facias* is that under which the sheriff mpowered to act in execution against goods and ls. It is therefore the writ most commonly in use.

Breaking doors.

er this writ it is not lawful for the sheriff to break oors in order to execute it.

emayne's Case (*a*) it was resolved:—

That the house of every one is to him as his nd fortress, as well for his defence against injury lence as for his repose.

n all cases when the door is open, the sheriff may he house and do execution about suit of any either on building or on goods. But it is not or the sheriff (on request made and denial) at the a common person to break the defendant's house to execute any process at the suit of any subject.

The house of any one is not a castle or privilege for himself, and shall not extend to protect any n who flies to his house, or the goods of any other h are brought or conveyed into his house to prevent vful execution, and to escape the ordinary process of and therefore in such cases, after denial on request e, the sheriff may break the house. But he does this is peril; for if it turn out that the defendant was in the house, or had no property there, he is a passer. (*b*)

Inner doors.

aving obtained admission, he can break inner doors xecute process (*c*), and this *semble* though defendant

) 5 Coke, 91. (*b*) *Johnson* v. *Leigh*, 1 Marsh. 565.
(*c*) *Lee* v. *Gansel*, Cowp. 1.

be not therein at the time. But he must first dem admittance. (*a*)

These rules extend to dwellings only, not to houses. (*b*) Except in case of distress for rent. (*c*)

Breaking window.

If a hole in the outer wall be intended for a windo door, the sheriff is justified in entering, otherwise not. If a window be shut, but not fastened, it may n opened for the purpose of distraining. (*e*)

In the execution of *mesne process* (*f*) the winde person residing in the house of another might, it w be broken open, the officer having first gained pe entrance at the outer door of the house, if such refused to open the door of his apartment afte informed by the officer that he had process to s him. (*g*)

Breaking out.

The sheriff being lawfully inside may break t door in order to carry away the goods seized. (*h*)

Breaking does not affect the validity of the execution.

A sale was held not to be vitiated by a pr illegal seizure of goods, inasmuch as the principle governs an arrest of the person does not apply execution against goods. *Semble* where a sheriff b a house, the execution against the goods is valid, alt the sheriff is liable to an action for the breaking. (*i*)

Valid execution.

By 1 & 2 Vict. c. 110, s. 12, the sheriff or his o "may and shall seize and take any money or bank

(*a*) *Ratcliffe* v. *Burton*, 3 B. & P. 223.

(*b*) *Penton* v. *Browne*, 1 Sid. 181.

(*c*) *Brown* v. *Glenn*, 16 Q. B. 254.

(*d*) *Whalley* v. *Williamson*, 7 C. & P. 294.

(*e*) *Nash* v. *Lucas*, L. R. 2 Q. B. 590.

(*f*) Abolished by 32 & 33 c. 62, s. 4.

(*g*) *Lloyd* v. *Sandilan* Moo. 207.

(*h*) *Pugh* v. *Griffith*, 3 N. 187.

(*i*) *Percival* v. *Stamp*, 9 167.

r of the Bank of England or otherwise) and any , bills of exchange, promissory notes, bonds, ies, or other securities for money belonging to the n against whose effects such writ shall be sued out; ay and shall pay or deliver to the party suing out execution any money or bank notes which shall be ized, or a sufficient part thereof; and may and shall any such cheques, bills of exchange, promissory bonds, specialties or other securities for money, as rity or securities for the amount by such writ d to be levied and raised; and may sue in the f such sheriff or other officer for the recovery of m or sums secured thereby, if and when the time of nt thereof shall have arrived; and that the pay- to such sheriff or other officer by the party liable on ch cheque, bill of exchange, promissory note, bond, ty or other security, with or without suit, or the ing, and levying execution against the party so shall discharge him to the extent of such payment such recovery and levy in execution, as the case , from his liability on any such cheque, bill of ge, promissory note, bond specialty, or other se- ; and such sheriff or other officer may and shall er to the party suing out such writ, the money so ecovered or such part thereof as shall be sufficient charge the amount by such writ directed to be ; and if, after satisfaction of the amount so to be , together with sheriff's poundage and expenses, rplus shall remain in the hands of such sheriff or fficer, the same shall be paid to the party against such writ shall be so issued."

ttels real, such as leases for years and fixtures able from the freehold, may be the subject of an Chattels real.

execution under this writ (*a*), and corn and other
which is raised by man's industry. (*b*)

Goods assigned.

And goods which the defendant has assigned,
than by sale in market overt, after the delivery o
writ to him for execution. (*c*)

Money.

A mere debt is not included under the term "mo
in the section above recited. (*d*) Nor *semble* money a
the defendant's person. (*e*)

Partners.

As to execution on goods, the property of partne
Order XLII. r. 10.

Invalid execution. Effects Personal.

By 8 & 9 Vict. c. 127, s. 8, actual necessaries
debtor, such as tools, bedding, &c., to the value
are prohibited from seizure.

Farm stuffs.

By 56 Geo. 3, c. 50, s. 1, "no sheriff or other
shall by virtue of any process of any Court of law
off or sell or dispose of for the purpose of being
off from any lands let to farm, any straw threshed
threshed, or any straw of crops growing, or any
colder, or turnips, or any manure, compost, ashes,
weed in any case whatsoever; nor any hay, gr
grasses, whether natural or artificial, nor any t
vetches, nor any roots or vegetables, being prod
such lands in any case where, according to any co
or written agreement entered into and made f
benefit of the owner or landlord of any farm, suc
grass or grasses, tares, and vetches, roots, and vege
ought not to be taken off or withholden from such
or which, by the tenour or effect of such covena
agreements, ought to be used or expended thereo

(*a*) *Palmer's Case*, 4 Co. Rep. 74; and see 46 & 47 Vict. c. 6
(*b*) Gilb. Ex. 19. (*c*) *Lowthal* v. *Tomkins*, 2 Eq. Cas. Abr
(*d*) *Harrison* v. *Painter*, 6 M & W. 387.
(*e*) *Sunbolf* v. *Alford*, 3 M. & W. 254.

ich covenants or agreements such sheriff or other
r shall have received a written notice before he shall
proceeded to sale."

e Act is not to extend to any straw, turnips, or
es which the tenant may remove from the farm
contract in writing. (*a*)

ngs which yield an annual profit and are not pro-
by man's industry cannot be distrained. (*b*)

ods which are not actually the defendant's, and which have passed without fraud under a bill of though in his possession, cannot be taken. (*c*) Goods not defendant's

e the plaintiff having purchased a public-house, for he could not himself obtain a license because he d in another tavern, put an insolvent debtor into ouse as his servant to keep it for him, and supplied ith money to pay for the license—the sheriff, it ld, could not take under an execution against such the plaintiff's liquors and chattels in the house com- to his custody. (*d*) Although A. cohabits with B. umes his name and passes for his wife and permits appear to be the owner of the furniture in the house h they live, the furniture being her property is ble to be taken under an execution against B. (*e*)

ds deposited with another as security for a debt (*f*) be seized, nor property which is held subject to a *g*) But a pawnbroker's interest in redeemable s may be taken. (*h*) Deposited as security.

8.
ilb. Ex. 19.
lasspoole v. *Young*, 9 B. &

and see 19 & 20 Vict. c.
awson v. *Wood*, 3 Taunt.

(*e*) *Edwards* v. *Bridges*, 2 Stark. 396.

(*f*) *Rogers* v. *Kennay*, 9 Q. B. 592.

(*g*) *Legg* v. *Evans*, 6 M. & W. 36.

(*h*) *Rollason* v. *Rollason*, 34 Ch. D. 495.

Lent on hire, or held not as owner.

But not goods lent on hire (*a*) nor those held by defendant in a representative character. (*b*)

Money.

Money in the hands of a trustee for a debtor is liable to seizure (*c*), nor that left in the hands of sheriff. (*d*)

Lodger's goods.

By 34 & 35 Vict. c. 79, s. 2, "if any bailiff shall or proceed with a distress on the furniture, goo chattels of a lodger (who has made a declaration sec. 1 that they are his property), such bailiff, &c., be deemed guilty of an illegal distress."

Venditioni Exponas.

Venditioni exponas.

The writ of *Venditioni exponas* is a writ in aid of t *fieri facias*, and is a command to the sheriff to se goods. (*e*) On receipt thereof it is the duty of the to sell the goods immediately for as much as able. (*f*)

Sale.

Responsibility for custody.

The sheriff is responsible for the custody of th between the time of the seizure and the sale, action will lie against him if he return that they in his hands for want of buyers. (*g*)

Duty to sell.

The goods must be sold within a reasonable tir before the return of the *Venditioni exponas* or he liable to action at the suit of the judgment creditor

(*a*) *Dean* v. *Whitaker*, 1 C. & P. 347.

(*b*) *Farr* v. *Newman*, 4 D. & East, 621.

(*c*) *France* v. *Campbell*, 9 D. P. C. 914.

(*d*) *Brun* v. *Hutchinson*, 2 D. & L. 43.

(*e*) *Cameron* v. *Reynold* 406.

(*f*) *Keightley* v. *Birch*, 524.

(*g*) *Sly* v. *Finch*, Cro.

(*h*) *Bates* v. *Wingfield* M. 831.

may, however, take a reasonable time to enquire ny act of bankruptcy. But a week is not a reason- time. (*a*)

Auction.

y 46 & 47 Vict. c. 52, s. 145, where the sheriff sells goods of a debtor under an execution for a sum ding £20 (including legal incidental expenses), the hall, unless the Court from which the process issued wise orders, be made by public auction and not by of sale or private contract, and shall be publicly rtised by the sheriff on and during three days next eding the day of sale.

Farm stuffs.

y 56 Geo. 3, c. 50, s. 3, the sheriff may sell the or produce mentioned in sec. 1 of that Act (*b*), t to an agreement to expend it on the land.

Lease and fixtures.

ere a lease and fixtures are taken, they may be parately if there is difficulty in finding a purchaser whole. (*c*)

Assignment of term.

ere an outgoing tenant has agreed to assign the der of his term, it may be sold before an actual ent by the sheriff under an execution, and have it the value agreed to be given in the proposed ent. (*d*)

yshford v. *Murray*, 23 L. T. N. S. 470. (*b*) *Ante*, p. 26.
arnard v. *Leigh*, 1 Stark. 43.
parrow v. *Earl of Bristol*, 1 Marsh. 10.

ELEGIT.

Elegit.

The writ of *elegit* is that under which the sheriff a
the execution of process against the lands of the judg
debtor. (*a*)

Breaking doors.

The power of the sheriff to break doors under thi
is identical with that under the writ of *fieri facias*. (*b*

Valid execution.

By 1 & 2 Vict. c. 110, s. 11, the sheriff or o
officer may "make and deliver execution unto the par
that behalf suing of all such lands, tenements, rec
tithes, rents, and hereditaments, including land
heriditaments of copyhold or customary tenure,
person against whom execution is so sued, or any
in trust for him, shall have been seised or possess
the time of entering up the said judgment or at a
afterwards, or over which such person shall at th
of entering up such judgment, or at any time aft
have any disposing power which he might wit
assent of any other person exercise for his own
. . . which lands, tenements, rectories, tithes, re
hereditaments by force and virtue of such executi
accordingly be held and enjoyed by the party t
such execution shall be so made and delivered."

Registration of judgments.

23 & 24 Vict. c. 38, s. 1, requires judgments
registered before they can affect lands of any
and to be sued out within three calendar month
registration in order to affect a *bonâ fide* purch
mortgagee.

Land must be delivered in execution.

By 27 & 28 Vict. c. 112, s. 1, no judgment is t

(*a*) 46 & 47 Vict. c. 52, s. 146. (*b*) *Ante*, p. 2

of any tenure, until such land shall have been lly delivered in execution by virtue of a writ of .

hether the execution creditor under this writ obtains al possession or must proceed subsequently by way ectment would seem doubtful. (*a*)

Right of execution creditor under writ.

tates in remainder or reversion cannot be taken. (*b*)

Invalid execution.

e sheriff must in every case make a return to this where anything has been done under it (*c*), but ot in the case of other writs unless ruled to do

Return to writ.

e is no sale under this writ. (*e*)

No sale.

f. Taylor v. *Cole*, 3 D. & East, 292, and *Rogers* v. *Pitcher*, . 201.

re South, L. R. 9 Ch. 373.

(*c*) *Hoe's Case*, 5 Rep. 90 a.

lerk v. *Withers*, 1 Salk. 322.

(*e*) Co. Litt. 289 b.

ATTACHMENT.

Attachment.

The writ of attachment is the one under which sheriff acts in proceeding to arrest for a contem Court.

The property of a debtor may still be taken in tion notwithstanding an attachment. (*a*)

Breaking doors.

In cases of this kind, as the King is a party, outc may be broken. In *Semayne's Case* (*b*) it is laid d

(3) In all cases when the King is a party, the (if the doors be not open) may break the party' either to arrest him or to do other execution of the process if otherwise he cannot enter. But be breaks it he ought to signify the cause of his com to make request to open the doors.

Where this writ had issued against a part action for non-compliance with an order for the over of deeds and documents, the officer charged execution of the writ might, it was held, break t door of the house in order to execute it. (*c*)

Duty of sheriff.

The sheriff must take the defendant and keep custody until he returns to the writ. But he

No poundage.

entitled to poundage. (*d*)

(*a*) *Roberts* v. *Ball*, 1 Jur. N. S. 585. (*b*) 5 Coke, 9
(*c*) *Harvey* v. *Harvey*, 26 Ch. D. 644.
(*d*) *R.* v. *Palmer*, 2 East, 411: *R.* v. *Sheriff of Devon*, 3 1

CAPIAS AD SATISFACIENDUM.

Capias ad Satisfaciendum.

it under which the sheriff has power to arrest ant is now confined to cases arising under the s Act, 1869, except, however, in the one instance ors at the suit of the Crown, to which that statute t relate. (*a*)

Crown debts.

power of the sheriff to break doors and the duties sheriff in regard to the execution are *semble* al with those stated under ATTACHMENT, *supra*. (*b*) re an officer put his hand into the debtor's g-house by an opening in the window, caused by having been broken in the scuffle, but not by the touched the defendant who was inside, and said re my prisoner," but being then unable to secure tor, broke open the outer door of the house and m, it was held that the officer had acted legally, st having been effected by touching the debtor, equent breaking of the outer door being justifiable purpose of taking into custody the debtor so (*c*)

Breaking doors.

& 33 Vict. c. 62, s. 4, any person may be arrested kes—

Debtors Act, 1869.

fault in payment of a penalty or sum in the f a penalty, other than a penalty in respect of any :

fault by a trustee or person acting in a fiduciary

judgment of Brett, L.J., *In re Henley & Co.*, 9 Ch. D. 482.
remarks of *Jessel*, M.R., in *Abud* v. *Riches*, 2 Ch. D. 528.
don v. *Jervis*, El. Bl. & El. 935

capacity and ordered to pay by a Court of Equity an in his possession or under his control:

4. Default by a solicitor in payment of ordered to pay costs for misconduct as such, ment of a sum of money when ordered to pay h in his character of an officer of the Court ma order.

5. Default in payment for the benefit of cred any portion of a salary or other income in respect payment of which any Court having jurisdict bankruptcy is authorized to make an order:

6. Default in payment of sums in respect payment of which orders are in this Act authorize made:

Provided that no person shall be imprisoned case excepted from the operation of this section.

Committal for small debts

Sec. 5. Any Court may commit to prison for not exceeding six weeks or until payment of the s any person who makes default in payment of any instalment of any debt due from him in pursuan order or judgment of that or any other competent

There must be evidence of means to pay. I not necessary that the "means to pay" should ha derived from the debtor's earnings or a fixed inco

It includes costs (*b*) and may be exercised if p is to be by instalments. (*c*) An order of a superio under this section, need not be executed within a y remains in force as long as the judgment whi issued to enforce. (*d*)

(*a*) *In re Park*, 14 Q. B. D. 597.

(*b*) *Hewitson* v. *Sherwin*, L. R. 10 Eq. 53.

(*c*) *Evans* v. *Wills*, 1 229.

(*d*) *Hermitage* v. *Kil* 9 Ex. 205.

Defendant about to quit England.

). When the plaintiff in any action in any of Her sty's superior Courts of law at Westminster in which, ought before the commencement of this Act, the dant would have been liable to arrest, proves at any before final judgment by evidence on oath, to the ction of a judge of one of those Courts, that the ff has good cause of action against the defendant to ount of fifty pounds or upwards, and that there ble cause for believing that the defendant is about England, unless he be apprehended, and that the of the defendant from England will materially the plaintiff in the prosecution of his action, ge may in the prescribed manner order such t to be arrested and imprisoned for a period not g six months, unless and until he has sooner e prescribed security not exceeding the amount in the action that he will not go out of England he leave of the Court.

of Equity had this power previously under the *Ne Exeat Regno*."]

Where action for penalty.

e the action is for a penalty, or sum in the a penalty, other than a penalty in respect of act, it shall not be necessary to prove that the f the defendant from England will materially the plaintiff in the prosecution of his action and ity given (instead of being that the defendant o out of England) shall be to the effect that any vered against the defendant in the action shall or that the defendant shall be rendered to (*a*)

tion of his action. Defendant cannot be kept in er final judgment has been signed. (*b*)

(*a*) Sec. 6. (*b*) *Hume* v. *Druyff*, 8 Ex. 214.

Mode of execution.

An arrest must take place by the authority t bailiff, but he need not be the hand that arrests, nor in presence, nor actually in sight, nor within any pre distance of the person arrested. (*a*)

An arrest by a bailiff to whom the warrant is addressed, in the presence of the officer to whom addressed, even though such officer has engaged h arrest in his absence, he himself being at a consid distance at the time, is irregular and the defend be discharged out of custody. (*b*)

Where a sheriff having directed a warrant to all his other officers to arrest B., A. afterwards that of C., it was held that the warrant was ill void in consequence. (*c*)

Wrong person, arrest of.

The sheriff having a writ commanding him to took B. who represented herself to be the perso in the writ. It was held that though B. might be by her misrepresentation from suing the sherif original taking, he could not justify detaining he had notice that she was not the real party. (

Arrest after return-day of writ.

An action for false imprisonment was he against the sheriff for an arrest made by the ba the return-day of the writ. (*e*)

Sheriff acts at his peril.

Although the sheriff is an agent for those writs into his hands to execute, he is also functionary, having at the same time duties to towards those against whom such writs are dire depriving a man of his liberty and seizing his g

(*a*) *Blatch* v. *Archer*, Cowp. 65.

(*b*) *Rhodes* v. *Hull*, 26 L. J. (Ex.) 265.

(*c*) *Hoskin* v. *Barrow*, 6 T. R. 122.

(*d*) *Dunston* v. *Pate* (N. S.) 495.

(*e*) *Parrott* v. *M* Esp. 585.

sheriff and his officers act at their peril, so that if the process is feigned, forged, or simulated, and is not the process or order of the Court, it is a mere nullity, and the sheriff can derive no protection from a piece of waste paper. (*a*)

There is no poundage under this writ. (*b*) No poundage.

(*a*) *Hooper* v. *Lane*, 6 H. L. Cas. 443.
(*b*) *R.* v. *Sheriff of Devon*, 3 Dowl. 10.

DELIVERY.

Delivery. The writ of delivery is the one under which the sheriff acts in recovering possession of specific chattel property. (*a*)

Breaking doors. The power of the sheriff to break doors under this writ is identical with that under a writ of *fieri facias* (*q.v.*)

EXTENT.

Extent. This writ is employed to recover debts of record due to the Crown.

Breaking doors. The sheriff's power to break doors is here as great as that under a writ of attachment (*q. v.*)

Execution on what. All the defendant's lands and goods may, if required to satisfy the writ, be taken in execution. (*b*) But there can be no poundage. (*c*)

It is however now very rarely used.

POSSESSION.

Possession. The writ of possession is the one employed in actions of ejectment. (*d*)

Breaking doors. The rule as to breaking doors under this writ is laid down in *Semayne's Case* (*e*), the second resolution in which is that—

"When any house is recovered by any real action, the sheriff may break the house, and deliver the seisin or possession to the plaintiff."

(*a*) Order xlviii. r. 1. (*b*) 2nd Inst. 395.
(*c*) Tidd's Pr. 1057. (*d*) Order xlvii. (*e*) 5 Coke, 91.

The sheriff's duty is to deliver the property to the plaintiff. Sheriff's duty.

The poundage is as in *elegit*. (*a*) Poundage.

SEQUESTRATION.

This writ is employed to enforce payment into Court, or to do other acts within a limited time. (*b*) *Sequestration.*

The sheriff's power of entry is similar to that under attachment (*q. v.*) Breaking doors.

The duty of the sheriff is to seize the estate and effects of the person named therein. Sheriff's duty.

(*a*) *Nash* v. *Allen*, 4 Q. B. 784; and see *post*, p. 49.
(*b*) Ord. xliii. r. 6.

Bankruptcy.

Bankruptcy.

By 46 & 47 Vict. c. 52, s. 46 (1), where the goods of a debtor are taken in execution, and before the sale thereof notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall on request deliver the goods to the official receiver or trustee under the order.

(2) Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding £20, the sheriff shall deduct the costs of the execution from the procceds of the sale, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the trustee in bankruptcy, who shall be entitled to retain the same as against the execution creditor; but otherwise he shall deal with it as if no notice of the presentation of the bankruptcy petition had been served on him.

Where a sheriff is in possession under several writs, some for more and some for less than £20, and proceeds to sell, the writs are payable in order of priority so long as there are funds to pay; but if he receives notice of a bankruptcy petition within fourteen days after the sale, only those writs are entitled to be paid which are for less than £20, and which would have been paid had not bankruptcy supervened. (*a*)

(3.) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy.

Warrants of the Court sitting in bankruptcy are executed by the Tipstaff. (*b*)

(*a*) *In re Pearce*, 14 Q.B.D. 966. (*b*) *Post*, p. 70.

LANDLORD.

Landlord, right of.

By 8 Anne, c. 14, s. 1, "no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out shall, before the removal of such goods from off the said premises, by virtue of such execution, pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit such execution is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done before the making of this Act, and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money."

One year's rent.

Weekly tenements.

By 7 & 8 Vict. c. 96, s. 67, "no landlord of any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any Court of law for more than four weeks' arrears of rent, and if such tenement shall be let for any other term less than a year, the landlord shall not have any claim or lien on such goods for more than the

arrears of rent accruing during four such terms or times of payment."

Existing tenancies.

The statute (8 Anne) applies only to tenancies which are actually in existence at the time of the seizure. (*a*)

Rent due at time of seizure.

The landlord's claim is confined to rent due at the time of the seizure. If the sheriff returns that he has paid so much "for rent due for the premises" it will be presumed that the payment was for rent due at the time of the seizure. It is no objection to the return that it is not expressly so stated thereon. (*b*)

There can be no deduction for poundage. (*c*)

Notice of claim.

The sheriff must receive notice of the claim while the goods are in his hands (*d*), or have knowledge thereof, which is sufficient without actual notice. (*e*)

Removal of goods.

The statute does not apply unless the goods are actually removed. (*f*) But it is the sheriff's duty not to remove them before the landlord's claim is satisfied. (*g*)

If goods insufficient sheriff to withdraw.

Where he receives notice of a year's rent being due and the goods on the premises are not sufficient to satisfy that rent he must withdraw. If he sells, the Court will not stay proceedings against him in an action on the statute even if he pays over the proceeds of the sale. (*h*)

Landlord taking security.

If upon the goods of a tenant being taken in execution the landlord's agent takes from the sheriff's officer an undertaking for the rent and then consents to the sale, the landlord cannot afterwards maintain an action against the

(*a*) *Cox* v. *Leigh*, L. R. 9 Q. B. 333.

(*b*) *Reynolds* v. *Barford*, 7 M. & G. 449.

(*c*) *Gore* v. *Gofton*, 1 Stra. 643.

(*d*) *Arnitt* v. *Garnett*, 3 B. & Ald. 440.

(*e*) *Andrews* v. *Dixon*, *Ib.* 645.

(*f*) *White* v. *Binstead*, 13 C. B. 304.

(*g*) *Calvert* v. *Jolliffe*, 2 B. & Ad. 418.

(*h*) *Foster* v. *Hilton*, 1 Dowl. 35: *Cocker* v. *Musgrove*, 15 L. J. Q. B. 365.

sheriff on the statute, although the rent is not paid according to the undertaking and the undertaking is void under the Statute of Frauds for not stating any consideration. (*a*)

It is the duty of the sheriff to enquire into the *bona fides* of a claim for rent. (*b*) *Bona fides.*

(*a*) *Rothery* v. *Wood*, 3 Camp. 24.
(*b*) *Frost* v. *Barclay*, 3 T. Rep. 617.

PROCEDURE.

Procedure The procedure against the sheriff is either by attachment or by action.

ATTACHMENT.

Attachment. The remedy by attachment can only be resorted to in one event. Attachment is a public remedy for the breach of a public duty by a public officer. It is only when such breach of public duty is coupled with actual damage to the individual that that individual has the right to call upon the Court to issue an attachment. (*a*)

When available. Attachment may be moved for in any of the following cases:—

Breaking open doors without excuse.

Corrupt practices, such as detaining the execution money.

Detaining person in custody till he pays money for his release.

Extortion—as to which see *infra*, p. 49.

False return to the writ, where circumstances of hardship to the plaintiff.

Force, using needless, in arrest.

Ill-treating persons arrested, and

Neglecting to execute. (*b*)

Sunday execution. This process cannot be executed on a Sunday. (*c*)

(*a*) *Brainard* v. *Connecticut River Railway Company*, 7 Cush. (U. S.) R. 510.

(*b*) Hawk. P. C. bk. ii. c. 22, ss. 2, 3, & 4.

(*c*) *R.* v. *Myers*, 1 T. R. 266.

It must be moved for within a reasonable time. Four months has been held not a reasonable time. (*a*)

Moved for within reasonable time.

The death of defendant will not remove the sheriff's liability. (*b*)

Death of defendant.

There is no liability on the part of the sheriff for not returning a writ which has not been transferred to him by his predecessor notwithstanding 3 & 4 W. 4, c. 99, s. 7 (*ante*, p. 11). (*c*)

Writ of predecessor.

Nor after his period of office has expired, unless he be ruled to return to the writ within six months, notwithstanding a request by the party to return before that period. (*d*)

After expiration of office.

(*a*) *R.* v. *Perring*, 3 Bos. & Pul. 151.

(*b*) Hawk. P. C. II. c. 22, s. 5, and *R.* v. *Sheriff of Middlesex*, 3 T. R. 133.

(*c*) *Thomas* v. *Newman*, 2 D. N. S. 33.

(*d*) *R.* v. *Jones*, 2 T. R. 1.

Action.

The actions which lie against a sheriff are those connected with wrongful seizure, wrongful sale and extortion.

Seizure.

Seizure after tender of debt.

If the sheriff seize goods after a tender of debt and costs he is liable to action. (*a*)

After secret act of bankruptcy.

He is also liable in trover at the suit of the assignees if he seizes after a secret act of bankruptcy of which he is ignorant (*b*), but not in trespass, as a man cannot be made a trespasser by relation. (*c*)

Execution afterwards set aside.

But an action will not lie against him where it would lie against another person for taking goods upon an execution which is afterwards set aside for irregularity. (*d*)

Neglect to seize.

Where he might have seized and neglected to do, so he is liable. (*e*)

Execution against wrong person.

Trespass *vi et armis* lies against a sheriff for taking the goods of A. instead of B. by his bailiff upon a *fi. fa.* (*f*)

Excessive seizure.

He is liable to an action for seizing goods of greater value than sufficient to satisfy the judgment. (*g*)

Action maintainable by representative.

An action of trespass *de bonis asportatis* can be brought by an administrator for taking away the goods of an intestate. (*h*)

(*a*) *Lefans* v. *Moregreen*, 1 Keb. 655.

(*b*) *Balme* v. *Hutton*, 9 Bing. 471, and see 46 & 47 Vict. c. 52, s. 46, *ante*, p. 40.

(*c*) *Smith* v. *Milles*, 1 T. R. 475.

(*d*) *Doe* v. *Thorn*, 1 M. & S. 425.

(*e*) *Pitcher* v. *King*, 5 Q. B. 766.

(*f*) *Sanderson* v. *Baker*, 3 Wils. 309; *Ackworth* v. *Kempe*, 1 Doug. 40.

(*g*) *Gawler* v. *Chaplin*, 2 Ex. 506.

(*h*) *Thorpe* v. *Stallwood*, 1 D. P. C. 24.

Landlord.

A landlord may maintain an action against him for removing goods before the rent has been satisfied. (*a*)

Goods privileged from seizure.

But no action will lie against the sheriff for taking in execution under a writ of *fi. fa.* the bedding and other excepted articles of an insolvent debtor who has petitioned under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, but if the goods are protected from seizure the remedy is by application to the Court for an order on the sheriff to restore them. *Per Martin, B.*:—No action will lie against a sheriff for seizing goods in obedience to the writ. (*b*)

(*a*) *Calvert* v. *Jolliffe*, 2 B. & Ad. 418.
(*b*) *Rideal* v. *Fort*, 11 Ex. 847.

Sale.

Sale after bankruptcy.

If a sale take place after the filing of a petition of bankruptcy, the sheriff having notice thereof must pay the amount of it to the assignees: if he pays it to the execution creditor he will be liable to action by the assignees for money had and received. (*a*)

Excessive sale.

Where the sheriff sold under an execution more than sufficient to satisfy the debt and costs, he was held liable in trover for the excess. (*b*) He is also liable when he sells for less money than ought to have been obtained. (*c*)

Delaying sale.

And for neglecting to sell goods taken under a *fi. fa.* within a reasonable time and before the return of the *venditioni exponas.* (*d*)

Improperly conducting sale.

The execution creditor may maintain an action for improperly conducting the sale, whereby his position is prejudiced. (*e*)

Costs.

The sheriff is not entitled as against the assignees to the costs of preparing a sale which has been stayed by notice of a prior act of bankruptcy. (*f*)

(*a*) *Notley* v. *Buck*, 8 B. & C. 160, and see 46 & 47 Vict. c. 52, s. 46, *ante*, p. 40.

(*b*) *Batchelor* v. *Vyse*, 4 M. & Scott, 552; *Aldred* v. *Constable*, 8 Jur. 956.

(*c*) *Gawler* v. *Chaplin*, 2 Ex. 506.

(*d*) *Jacobs* v. *Humphery*, 2 C & M. 413; *Carlile* v. *Parkins*, 3 Stark. 163.

(*e*) *Mullett* v. *Challis*, 16 Q. B. 239.

(*f*) *Searle* v. *Blaise*, 14 C. B. N. S. 856.

Extortion.

Extortion. By 29 Eliz. c. 4, s. 1, no sheriff, under-sheriff or bailiff, nor any of them, by reason or colour of their offices shall "have, receive, or take of any person or persons whatsoever, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods or chattels of any person or persons whatsoever, more or other consideration or recompense than by this present Act is and shall be limited and appointed . . upon pain and penalty that each and every sheriff, under-sheriff or bailiff . . shall lose and forfeit to the party grieved his treble damages . . . and the sum of £20." (By s. 2 this Act does not apply to cities or towns corporate.)

Poundage. The poundage allowed is for the first £100, 5 per cent., and afterwards 2½ per cent.

By 7 Will. 4 & 1 Vict. c. 55, s. 3, "any sheriff, officer or minister, acting in the execution of process directed to any sheriff or sheriffs, or engaged or concerned therein, who shall extort, demand, take, accept or receive from any person or persons any fee or fees, gratuity or reward not allowed as aforesaid (*i.e.* on taxation, *vide* s. 2), or greater in amount than as allowed as aforesaid, such sheriff or other, his officer or minister, upon complaint thereof made against him to any of the said Courts (*i.e.* at Westminster), and on proof being made thereof upon oath either by the examination of witnesses *vivâ voce*, or on affidavits or on interrogatories, to the satisfaction of the Court to which the said complaint shall be made, that such sheriff, officer or minister, as the case may be, hath offended therein as aforesaid, then and in such

case, every such sheriff, officer or minister, as the case may be, shall be adjudged guilty of a contempt of such Court and punished by such Court accordingly."

This statute creates exemptions from that of Elizabeth and legalizes the receipt of fees beyond the poundage if the judges make regulations to that effect. (*a*)

All that is taken beyond this is excess under the statute of Elizabeth, and renders the officer liable to action for the penalty given by that statute. (*b*)

The sheriff is entitled, under the table of fees, to a percentage on the whole proceeds of the sale including rent paid to the landlord, but not to an allowance for extra expenses not included in the table. (*c*)

What fees allowed.

The following are the fees allowed:—

For every warrant which shall be granted by the sheriff to his officer upon any writ or process,

	£	*s.*	*d.*
In London and Middlesex	0	2	6
And on outlawry process, an additional	0	2	6
In other counties, where the most distant part of the county shall not exceed 100 miles from London	0	5	0
Not exceeding 200 miles	0	6	0
Exceeding 200 miles	0	7	0
Where there are several defendants in a writ of *capias*, and warrants are issued thereon by the under-sheriff against more than one defendant, no more shall be charged, in any case, for each warrant after the first, than	0	2	6
For an arrest in London	0	10	6
In Middlesex, not exceeding a mile from the General Post Office	0	10	6
Not exceeding 7 miles from the same place	1	1	0
In other counties, not exceeding a mile from officer's residence	0	10	6
Not exceeding 7 miles	1	1	0

(*a*) Per Parke, B., *Pilkington* v. *Cooke*, 16 M. & W. 626.
(*b*) Per Denman, C.J., *Wrightup* v. *Greenacre*, 10 Q. B. 14.
(*c*) *Davis* v. *Edmonds*, 12 M. & W. 31.

	£.	s.	d.
Exceeding 7 miles	1	11	6
For conveying the defendant to gaol from the place of arrest (*a*) *per* mile	0	1	0
For an undertaking to give a bail bond	0	10	6

For a Bail Bond.

If the debt do not exceed £50	0	10	6
„ „ 100	1	1	0
„ „ 150	1	11	6
„ „ 300	2	2	0
„ „ 400	3	3	0
„ „ 500	4	4	0
If it shall exceed £500	5	5	0
For receiving money, under the statute, upon deposit for arrest, and paying the same into Court, if in London or Middlesex	0	6	8
If in any other county	0	10	0

For filing the Bail Bond.

If the arrest be made in London or Middlesex	0	2	0
If in any other county	0	4	0

Assignment of Bail or other Bond.

If in London or Middlesex	0	5	0
If in any other county, including postage	0	7	6
For the return to any writ of *habeas corpus*, if one action	0	12	0
For each action after the first	0	2	6
For the bailiff to conduct prisoner to gaol *per diem*	0	10	6
And travelling expenses *per* mile	0	1	0
For search for detainers (*b*)	0	1	0
Bailiff's messenger for that purpose (*b*)	0	2	6
To the bailiffs, for executing warrants on extent, *capias utlagatum*, *fi. fa.*, *ca. sa.*, *ne exeat*, attachment, *elegit*, writ of possession, forfeited recognizance, and other like matters, for each, if the distance from the sheriff's office or the bailiff's residence do not exceed 5 miles	1	1	0

(*a*) *Cooper* v. *Hill*, 6 C. B. N. S. 703.

(*b*) Not payable under *fi. fa.*, *Masters* v. *Lowther*, 11 C. B. 948.

	£.	*s.*	*d*
If beyond that distance . . . . . *per* mile	0	0	6
For each man left in possession when absolutely necessary (*a*)			
If boarded . . . . . *per diem*	0	3	6
If not boarded . . . . . *per diem*	0	5	0
For every sale by auction, notwithstanding the defendant should become bankrupt or insolvent, where the property sold does not produce more than £300, 5 *per cent.*; £400, 4 *per cent.*; £500, 3 *per cent.*; and where it exceeds £500, 2½ *per cent.* (*b*)			
Bond of indemnity, besides stamps	1	10	0
Certificate of execution having issued for record . .	0	5	0

Extortion a criminal offence.

Extortion is at common law indictable. The sheriff is, however, not liable in such case for the act of his officer (*ante*, p. 16). (*c*)

Proceedings for contempt do not preclude action.

Proceeding under 7 Will. 4 & 1 Vict. c. 55, s. 3, for contempt does not preclude the plaintiff from bringing his action. (*d*)

Poundage.

The sheriff is entitled to deduct poundage, though

Compromise between parties.

the parties compromise before he sells (*e*),

Execution set aside.

and when the execution has been set aside for irregularity after the levy and payment over of the proceeds have been made. (*f*)

Poundage due on seizure.

When he has seized and is in possession of the goods

(*a*) See *Halliwell* v. *Heywood*, 10 W. R. 780.

(*b*) Fees for advertising and appraisement are inadmissible: *Braithwaite* v. *Marriott*, 32 L. J., Ex. 24; *Marshall* v. *Hicks*, 10 Q. B. 15.

(*c*) Per Ashurst, J., *Woodgate* v. *Knatchbull*, 2 D. & East, 154.

(*d*) *Pilkington* v. *Cooke*, 16 M. & W. 615.

(*e*) *Alchin* v. *Wells*, 5 D. & East, 470.

(*f*) *Rawstone* v. *Wilkinson*, 4 M. & Sel. 256.

or lands, he is entitled to his poundage. (*a*) But the seizure must be actual and according to the writ. (*b*) It is not necessary that he should proceed to a sale. (*c*)

But when bankruptcy supervenes after seizure and before sale under a writ of *fi. fa.* the sheriff is not entitled to poundage under the words "costs of the execution," in section 46 (1) of the Bankruptcy Act, 1883. (*d*)

Keeping possession.

The sheriff will be allowed his costs of keeping possession, after applying to the Court, where it is for the benefit of the parties, though it be not in furtherance of his duty. (*e*) But where he retained, out of the proceeds of a sale, which were not sufficient to satisfy the plaintiff's claim, the expenses occasioned by keeping possession under an injunction, it was held that this was an indirect taking of more than the poundage allowed by 29 Eliz. c. 4. (*f*)

Restrained from selling.

Where the sheriff was restrained from selling after having taken possession of the goods of a company which had gone into liquidation, he was held entitled to his poundage and costs. (*g*)

Creditor becoming disentitled.

Where after seizure and before sale the execution creditor becomes disentitled to recover the debt, the sheriff cannot sell any portion of the goods in order to realize thereby the amount of his possession-money, fees and expenses. (*h*)

(*a*) *Bissicks* v. *Bath Colliery Company, Limited*, 2 Ex. D. 459.
(*b*) *Nash* v. *Dickenson*, L. R. 2 C. P. 252.
(*c*) *Re Sheriff of Surrey*, 38 L. T. N. S. 116.
(*d*) *In re Ludmore*, 13 Q. B. D. 415.
(*e*) *Underden* v. *Burgess*, 4 Dowl. 104.
(*f*) *Buckle* v. *Bewes*, 5 D. & R. 495.
(*g*) *In re Perkins Beach Lead Mine*, W. N. 1877, 261.
(*h*) *Sneary* v. *Abdy*, 1 Ex. D. 299.

Incidental costs of sale.

A sheriff who has seized goods under a *fi. fa.* and disposed of them by appraisement and bill of sale, is not entitled to deduct the expenses of the appraisement and sale, the scale of fees framed under 7 Will. 4 & 1 Vict. c. 55, applying to sales by auction only. (*a*) But where a sale takes place by order of the Court, all incidental expenses may be deducted, even though it appear at the trial that the seizure was wrongful. (*b*)

Excess.

If a plaintiff pay money in excess of the amount due, he may recover it from the sheriff. (*c*) And an action for money had and received may be maintained against him for that purpose. (*d*)

Motion to refund and for attachment.

If an officer be guilty of extortion, motion may be made against the sheriff to shew cause why he should not refund the excess, and against the officer to shew cause why an attachment should not issue against him. (*e*)

Under-sheriff's fees.

The under-sheriff cannot refuse to execute process until he has received his fees. If he does so, he renders himself liable to indictment for extortion. (*f*)

(*a*) *Phillips* v. *Viscount Canterbury*, 11 M. & W. 619.

(*b*) *Bland* v. *Delano*, 6 Dowl. 293.

(*c*) *Dew* v. *Parsons*, 2 B. & A. 562.

(*d*) *Longdill* v. *Jones*, 1 Stark. 345.

(*e*) *Blake* v. *Newburn*, 2 B. C. Rep. 263.

(*f*) *Hescott's Case*, 1 Salk. 330.

Sheriff, how charged.

In an action brought by the assignees of a bankrupt for goods taken by the sheriff under an execution, it appeared that the goods were taken at about the time of year at which the sheriffs were changed and that a witness after this case was set down for trial saw a form of return signed by the defendant as sheriff indorsed on the writ which had never been returned. This was held sufficient evidence that he was the sheriff who executed the writ, and that if the writ when produced at the trial has his name erased and the name of the previous sheriff substituted, it will be a question for the jury whether that substitution was made to correct a mistake or to defeat the plaintiff. (*a*) After expiration of office.

In order to charge the sheriff with the act of the bailiff in an action for extortion it is not sufficient to produce a copy of the precept with the bailiff's name endorsed upon it, although the sheriff has returned *cepi corpus:* the plaintiff in such case must either produce the warrant, or prove some recognition of the act of the bailiff by the sheriff. But it is not essential in such case to produce the warrant. The privity between the sheriff and the bailiff may be proved by shewing that upon an arrest a bail-bond was executed and delivered to the bailiff, who returned it to the sheriff, upon which the latter made his return *cepi corpus.* (*b*) Privity between sheriff and bailiff.

To render the sheriff liable for the wrongful act of the bailiff, it is not enough to prove him a general bailiff and

(*a*) *Whitehouse* v. *Atkinson*, 3 C. & P. 344.
(*b*) *Martin* v. *Bell*, 1 Stark. 413.

that he had given a bond of indemnity to the sheriff as such, together with proving the copy of the warrant under which he entered and seized the plaintiff's goods. But the privity between such bailiff and the sheriff must be established in the particular transaction on the best evidence, by proving the original warrant of execution directed by the sheriff to such bailiff, or at least by proving such notice to produce it as will in case of non-production let in secondary evidence of its contents. (*a*)

Production of warrant.

To fix the sheriff it is sufficient to prove the warrant under which the goods were seized by the bailiff. (*b*)

Of writ.

Production of the writ with the bailiff's name indorsed on it is sufficient, it being the course in the sheriff's office to indorse upon the writ the name of the bailiff by whom it is executed. (*c*)

But proof of a copy of a bailable writ with the name of the sheriff's officer indorsed upon it was, in a later case, held not to be evidence that the sheriff appointed that officer to execute the writ. (*d*)

Where the plaintiff proved an examined copy of the writ on which the officer's name was indorsed and that a person of that name actually executed the writ and that the course of the sheriff's office was that the name of the officer to whom the warrant was granted was usually indorsed on the writ, it was held sufficient *primâ facie* evidence to connect the sheriff with the acts of the officer. (*e*)

Recognition of act of officer.

Although the regular way of connecting the sheriff

(*a*) *Drake* v. *Sykes*, 7 T. R. 113.
(*b*) *Grey* v. *Smith*, 1 Camp. 387.
(*c*) *Tealby* v. *Gascoigne*, 2 Stark. 202.
(*d*) *Morgan* v. *Brydges*, 2 Stark. 314; but see *Bowden* v. *Waithman*, 5 Moo. 184, n. (*e*) *Scott* v. *Marshall*, 2 C. & J. 238.

with his officer so as to make him responsible, is by the production of the warrant, any recognition by the sheriff that the officer acted under his authority will dispense with the necessity of producing it. (*a*)

(*a*) *Jones* v *Wood*, 3 Camp 228

Pleading.

Pleading, must show damage.

An action cannot be maintained against the sheriff for negligence in not levying under a *fi. fa.* without shewing actual pecuniary damage. (*a*)

Plaintiff, an execution creditor, delivered a *fi. fa.* to the sheriff, who proceeded to execute it by seizing goods upon the premises, and apparently the property of the execution debtor, but which were then in fact in the possession of the holder of a bill of sale, to whom they had been previously assigned. The sheriff remained on the premises until dismissed by the plaintiff's attorney, and being directed to return to the writ, made a return that he had seized the goods of the debtor, and kept them until ordered by the plaintiff's attorney to withdraw from possession. To an action brought by the plaintiff against the sheriff for not levying under the writ, and for a false return, defendant pleaded (*inter alia*) *nulla bona*, and at the trial set up as his sole defence the bill of sale, which the jury found to be valid, and a verdict was entered for defendant. It was held that actual damage was necessary to support the action; that the defendant was not estopped by his return from proving that the goods seized did not belong to the debtor; that as they were found to be the property of the assignee, they were not available for sale under the execution, and that therefore plaintiff had sustained no damage from the conduct of the sheriff, and could not maintain an action. (*b*)

(*a*) *Hobson* v. *Thelluson*, L. R. 2 Q. B. 642.
(*b*) *Stimson* v. *Farnham*, L. R. 7 Q. B. 175.

Where it appeared that in consequence of the sheriff's possession the goods became liable to the landlord for a quarter's rent, and charges were incurred for a messenger that otherwise would not have been necessary, and the goods had, after the commencement of the action, been delivered up to and unconditionally accepted by the plaintiffs in a perfectly undeteriorated condition, it was held that the plaintiffs were not entitled to recover the rent and charges so incurred by way of special damage, there being no averment of special damage in the declaration. *Quære* whether such rent and charges were so necessary a consequence of the wrongful conversion as to entitle the plaintiff to recover them in trover, even with the averment of special damage. (*a*)

Wrongful seizure.

In an action on the case against the sheriff, the declaration, after reciting that two writs of *fi. fa.* had been delivered to him to be executed, stated that defendant as such sheriff, under colour of the writs, wrongfully seized the goods of the plaintiff to a much greater value than necessary to satisfy, and sold the same:—*Held* sufficient. (*b*)

Abusing process of Court.

In an action for abusing the process of the Court in order illegally to compel a party to give up his goods, it is not necessary to aver that the process was sued out without reasonable and probable cause. (*c*)

Breaking and entering.

Where the action was in trespass for breaking and entering plaintiff's dwelling-house, and assaulting and imprisoning him, the pleas were:—1. Not guilty. 2. As to all the trespasses alleged, except the breaking of the house, a justification under a writ of *ca. sa.* and warrant

(*a*) *Moon* v. *Raphael*, 2 Scott, 489.
(*b*) *Gawler* v. *Chaplin*, 2 Ex. 503
(*c*) *Grainger* v. *Hill*, 4 Bing. N. C 212.

thereon by virtue of which defendants entered the house, the outer door being open, and arrested the plaintiff. Reply, admitting the writ and warrant, *de injuria*. It was proved that the defendants, who were bailiffs in execution of the warrant, broke open the outer door of the plaintiff's house, and so gained entrance and arrested him. It was held that the averment in the plea that the outer door was open was a material averment, for that the doors being open was a condition precedent to the defendants' right to enter and arrest the plaintiff in his house, and therefore this plea was sufficiently traversed by the general replication, and it was not necessary to reply the breaking of the outer door. (*a*)

In trespass against a sheriff for breaking and entering plaintiff's dwelling-house, and there remaining until plaintiff paid defendant a sum of money, the plea was that defendant entered under a writ of *fi. fa.* and warrant thereon directing him to levy. Replication that before the writ and warrant were fully executed, defendant levied more than the sum he was entitled to:—*Held*, that the replication alleged no facts constituting the defendant a trespasser *ab initio*, and was therefore bad on demurrer. (*b*)

Where the defendants justified the breaking and entering and forcing open the inner doors and searching rooms as officers of the sheriff under a *ca. sa.* against C. F., and that for six months before the trespasses C. F. had resided in the plaintiff's house, and that at the time of the trespasses the defendants had good ground to suspect and believe, from the information of the attorney who

(*a*) *Kerbey* v. *Denby*, 1 M. & W. 336.
(*b*) *Shoreland* v. *Govett*, 8 D. & K. 257.

sued out the writ, that C. F. was then in the house; it was held no defence. (*a*)

In a plea of justification by the sheriff to an action for breaking and entering plaintiff's house, and breaking open the inner doors, it is not sufficient to allege that he entered under a *capias* against one A. B., the outer door being open, and that the rooms in the house being fastened, and having reasonable suspicion that A. B. was therein, the defendant broke open the same: without averring that A. B. was actually in the house, or that there was any previous demand of admittance, the sheriff being justified or not in entering the house of a stranger by the event. (*b*)

Removing goods before paying rent.

In an action against the sheriff for removing goods without paying a year's rent in arrear, the plea of "not guilty" admits the seizure by the sheriff and it is not necessary to produce the warrant in order to connect him with the officer. (*c*)

Where an action on the case was brought against the sheriff under 8 Anne, c. 14, s. 1, for taking by virtue of a *fi. fa.* against S. goods which were on premises demised by the plaintiff to I. and for which premises a quarter's rent was due, and removing the goods after notice without paying the rent, the plea was that the defendant did not take *modo et forma*, the goods taken were not the property of S. and the sheriff accounted for them to the real owner. It was held that on this issue plaintiff was nevertheless entitled to a verdict. (*d*)

Actions under statutes.

In actions under statutes, it is not necessary to recite

(*a*) *Morrish* v. *Murray*, 2 D. & L. 199.

(*b*) *Johnson* v. *Leigh*, 1 Marsh. 565.

(*c*) *Reid* v. *Poyntz*, 8 Dowl. 410.

(*d*) *Forster* v. *Cookson*, 1 Q. B. 419.

the statute. It is enough to state that the thing was done contrary to the statute in that case made and provided. (*a*) A claim may *semble* now be made under the joint operation of 29 Eliz. c. 4, and 7 Will. 4, and 1 Vict. c. 55, but it must appear how much was taken under each statute. (*b*)

Officer joining pleading with another who cannot justify.

Where an officer, for whom a writ or warrant alone would have been a justification, joins in pleading with the party for whom it would not, and who can only defend himself on the validity of the judgment or proceeding, he foregoes the benefit of the writ or warrant. (*c*)

(*a*) *Holmes* v. *Sparkes*, 12 C. B. 251.
(*b*) *Usher* v. *Walters*, 4 Q. B. 553.
(*c*) *Smith* v. *Bouchier*, 2 Str. 993.

Evidence.

Evidence. Estoppel

Plaintiff hired a house of the defendant, representing herself to be at the time a *feme coverte*, and upon the faith of like representation she obtained goods from various tradesmen. It was held that her assertions that she was a *feme coverte* estopped her from suing as a *feme coverte* in respect of a trespass committed by the defendant under colour of a distress for rent. (*a*)

Quære whether a woman, who cohabits with a man, assumes his name and represents herself as his wife, can maintain trespass against the sheriff for taking in execution furniture, alleged to be her property, but being in the house in which the parties resided? It having been found by the jury that the property might have been given up by the woman to the man during the cohabitation, the Court refused to disturb the verdict. (*b*)

If an executrix use the goods of her testator as her own and afterwards marry and then treat them as the goods of the husband, she shall not be allowed to object to their being taken in execution for her husband's debt. (*c*)

Action for false return.

The sheriff in an action against him for a false return when having returned *nulla bona* may shew the facts under the plea that the original defendant had no goods whereon the sheriff could levy the damages. (*d*) But he cannot go into circumstantial evidence to impeach the judgment on the ground of collateral fraud. (*e*)

(*a*) *Langford* v. *Foot*, 2 M. & Sc. 349.

(*b*) *Edwards* v. *Farebrother*, 2 M. & P. 293.

(*c*) *Quick* v. *Staines*, 1 Bos. & Pul. 293.

(*d*) *Wintle* v. *Freeman*, 11 Ad. & E. 539.

(*e*) *Tyler* v. *Leeds* (*Duke of*), 2 Stark. 222.

Abusing process of Court.

In an action for abusing the process of the Court in order illegally to compel a party to give up his goods, it was held that it is not necessary to prove that the action under which the process was improperly employed has determined. (*a*)

Admissions.

In an action against the sheriff for a false return to a writ what was stated by the bailiff to whom the warrant under it was directed when asked by the plaintiff's attorney before the return of the writ why he did not execute it, is evidence against the sheriff. (*b*) But admissions by the under-sheriff are not evidence unless they accompany some official act of the latter or tend to charge himself. (*c*)

If an execution creditor has indemnified the sheriff, what he says is evidence in an action against the sheriff for taking the plaintiff's goods under an execution against a third person. (*d*)

Declarations made by an officer whilst in possession of goods under a *fi. fa.* after the return of the *fi. fa.* are evidence against the sheriff, and no new warrant is necessary after a writ of *venditioni exponas* to connect the officer with the sheriff. (*e*)

Affidavit under Interpleader Acts.

In an action of trespass against the sheriff for taking the goods of the plaintiff, an affidavit made by the officer under the Interpleader Act respecting the said goods is admissible in evidence to prove that the officer who seized the goods is a servant of the sheriff. (*f*)

Time of execution.

Where a sheriff's officer having a *fi. fa.* against A. called at

(*a*) *Grainger* v. *Hill*, 4 Bing. N. C. 212.

(*b*) *North* v. *Sheriff of Middlesex*, 1 Camp. 389.

(*c*) *Snowball* v. *Goodricke*, 4 B. & Ad. 541.

(*d*) *Proctor* v. *Lainson*, 7 C. & P. 629.

(*e*) *Jacobs* v. *Humphery*, 2 Coke, 413.

(*f*) *Brickill* v. *Hulse*, 2 N. & P. 426.

his house when he was from home, waited till he returned and then informed him of his business, this was held sufficient evidence to warrant the jury in finding that the writ was executed at the time of the officer's entry. (*a*)

Production of warrant.

In *Barsham* v. *Bullock,* which was for a penalty against the sheriff for taking the plaintiff who had been arrested by the defendant to a public drinking-house without the consent of the plaintiff: the plea traversed the taking without consent. Evidence was given at the trial that some officer of the defendant who arrested plaintiff also took him to the drinking-house against his consent: *Held,* that as the plea admitted that the officer who arrested plaintiff was the defendant's agent, and the evidence shewed that the same officer took plaintiff to the drinking-house, it was not necessary to produce the warrant to make the defendant liable. (*b*)

Where a sheriff's warrant to levy execution had after the levy been returned by the bailiff to the under-sheriff, while the sheriff was yet in possession, and the bailiff upon being called upon as a witness did not produce it, it was held that proof of notice to the sheriff's attorney to produce it was sufficient to entitle the party to give parol evidence of its contents. (*c*)

A party served with a *subpœna duces tecum* is bound to produce the required documents in Court, and need not be sworn. (*d*)

Loss of warrant.

In an action of trover against the sheriff for goods seized under a *fi. fa.* the warrant of seizure was not produced nor any notice given to produce it. It was proved that the sheriff's officer who made the seizure had put his

(*a*) *Bird* v. *Bass,* 6 M. & G. 143.
(*b*) 2 P. & D. 241.
(*c*) *Taplin* v. *Atty,* 3 Bing. 164.
(*d*) *Summers* v *Moseley,* 4 Tyr. 158.

son into possession and given the warrant to him. The son stated he believed he returned it either to his father or to the sheriff's office. The officer said it was the custom to deliver warrants to the auctioneer, that they might be transmitted with the auction sheet to the excise office through the supervisor of excise for the district: that he had searched his own papers for it and had inquired for it at the sheriff's office; a search was also proved among the auctioner's papers and at the excise office; but the supervisor was not called nor any search of his papers proved: *Held*, that reasonable proof was given of the loss of the warrant so as to let in secondary evidence of its contents in order to connect the sheriff with the officer. (*a*)

Where the officer who seized, being called to prove the warrant, stated that he entered on a certain day under a warrant in the usual form, but that he had lost the warrant, it was held sufficient to fix the sheriff. (*b*)

Writ. A writ may be at once both a good and bad writ, *i.e.* a writ set aside for irregularity may be good as to the sheriff and all persons acting under him and bad as to the persons who sued it out. (*c*)

In an action against a surviving sheriff of London, a return to the writ directed to the sheriffs, purporting to be returned of both, must be taken conclusively to be returned of defendant. (*d*)

A sheriff justifying in trespass under a writ of *fi. fa.* need not shew its return. (*e*)

(*a*) *Minshall* v. *Lloyd*, 2 M. & W. 450.

(*b*) *Moon* v. *Raphael*, 2 Scott, 489.

(*c*) *Jones* v. *Williams*, 9 Dowl. 710.

(*d*) *Carlile* v. *Parkins*, 3 Stark. 163.

(*e*) *Cheasley* v. *Barnes*, 10 East, 73.

Where a sheriff was sued in trover for goods alleged to have been wrongfully seized and sold under an execution and the defence was that the plaintiff claimed the goods by virtue of an assignment which was void as against creditors: *Held*, that the sheriff could take advantage of this defence without, as in ordinary cases, shewing his authority, by proving the writ, and that a mandate to him from the Chancellor of the Duchy of Lancaster (it lay in the Duchy) was sufficient for the purpose. (*a*)

Sheriff's officer.

In an action against the sheriff, the officer who had given him a security was held not a competent witness for the defence, even though the officer is indemnified by the execution creditor and does not employ an attorney. (*b*)

A sheriff's officer subpœnaed to produce the warrant of the sheriff, may be compelled to do so without being sworn. (*c*)

In trespass and false imprisonment against a sheriff's officer for an illegal arrest, it is evidence against him that the warrant was directed to him. (*d*)

The Court will not before trial stay the proceedings in an action against a sheriff's officer on 32 Geo. 2, c. 28, s. 12, though a similar action has been commenced against the sheriff for the same offence. (*e*)

(*a*) *Ogden* v. *Hesketh*, 2 C. & K. 772.

(*b*) *Whitehouse* v. *Atkinson*, 3 C. & P. 344.

(*c*) *R.* v. *Menlis*, M. & M. 515, n.

(*d*) *Slack* v. *Sheriffs of London*, 1 Esp. 42.

(*e*) *Pechell* v. *Layton*, 2 T. R. 512.

Damages.

Damages. By 56 Geo. 3, c. 50, s. 9, the sheriff is not liable for damages for anything done under that Act (*a*) unless there be wilful omission on his part.

Damages must be both alleged and proved in actions for wrongful seizure. (*b*)

Special damage. If a sheriff wrongfully seize goods which are afterwards taken from him by another wrong-doer, the owner of the goods may, in an action against the sheriff, recover as special damage the amount necessarily paid to the other wrong-doer in order to get back the goods. (*c*)

Extortion. Where a plaintiff brings his action on the statute of Elizabeth, the jury must be asked to assess the actual damage sustained—that amount to be entered upon the record. The plaintiff will then be entitled to judgment for thrice the amount found by the jury. (*d*)

Trespass *ab initio*. Where the defendants had become trespassers *ab initio* by breaking the door, the jury were rightly directed that they might (even on the plea of not guilty) give damages in respect of all the injuries complained of in the declaration. (*e*)

Measure of damages. The price at which the goods are sold at a sheriff's sale is not necessarily the measure of damages in trover if the sale be wrongful; but, when the plaintiff is an assignee, as he must have sold the goods if they had come

(*a*) *Ante*, p. 26. (*b*) *Tancred* v. *Allgood*, 4 H. & N. 444.
(*c*) *Keene* v. *Dilke*, 4 Ex. 388.
(*d*) *Buckle* v. *Bewes*, 4 B. & C. 154.
(*e*) *Kerbey* v. *Denby*, 1 M. & W. 336.

to him, juries are often induced to find a verdict for no more than the sum at which the sheriff actually sold. (*a*)

In an action against the sheriff for not selling the joint property of A. and B. under an execution against the goods of A., the measure of damages is *semble* half the value of the goods. (*b*)

Where the action is for not levying, although *primâ facie* the measure of damages is the value of the goods which might have been levied, yet it is for the jury to say, looking at the probabilities of the case, whether or not, if the execution had been levied, the plaintiff would have derived any benefit from it by reason of other creditors of the execution debtor being in a position to make him bankrupt. (*c*)

(*a*) *Whitehouse* v. *Atkinson*, 3 C. & P. 244.
(*b*) *Tyler* v. *Leeds* (*Duke*), 2 Stark. 222.
(*c*) *Hobson* v. *Thelluson*, L. R. 3 Q. B. 642.

The Tipstaff.

The tipstaff.

The Tipstaff is an officer of the High Court, whose duty it is to put into execution

(1) Orders of committal for contempt and the like made by judges of the High Court, and

(2) Warrants and orders of the same Court sitting in Bankruptcy.

Orders for committal.

His powers and duties in case of orders of committal are as large as those of the sheriff under attachment (*q. v.*). (*Ante*, p. 32.)

In bankruptcy.

Since the passing of the Bankruptcy Act, 1883 (*a*), the warrants of the High Court in Bankruptcy have been executed by this officer. For his powers thereunder see sec. 51 of that Act, *post*, p. 79.

Liabilities.

In the first of these cases, he is protected so long as he acts within the scope of his order or warrant. In the second, he is liable in the same manner as constables and other officers acting under warrants of inferior Courts. (*b*)

(*a*) 46 & 47 Vict. c. 52. (*b*) See *post*, p. 79 & Pt. VII., "Warrants."

The High Bailiff.

The high bailiff.

The High Bailiff of the County Court occupies in regard to that Court a position precisely parallel to that occupied by the sheriff in regard to the High Court. (*a*)

There is, however, one important distinction—namely, that for "anything done in pursuance of the County Courts Acts," the High Bailiff, as well as the bailiffs appointed to assist him, are entitled to notice of action and other privileges which will be found treated, *infra*, p. 83.

Duties.

By 9 & 10 Vict. c. 95, s. 33, he is, by himself or by the bailiffs appointed to assist him, required to "execute all the warrants, precepts, and writs issued out of the Court."

Liabilities.

And he is to be "responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers."

In *Smith* v. *Pritchard* (*b*) it was held that a high bailiff of the Court out of which a warrant originally issues is not responsible for any irregularities in its execution by the bailiff of another court, even though his own bailiff assisted therein. The high bailiff of the Court from which the warrant reissues is, however, liable for acts done by the bailiffs under the supposed authority of the writ; but not for an assault committed in the assertion of a power given by statute to a bailiff who happens to be obstructed while performing what he believes to be his duty.

(*a*) *Burton* v. *Le Gros*, 34 L. J. (Q. B.) 91. (*b*) 8 C. B. 565.

The Bailiff.

The bailiff.

What has been above stated in regard to the position of the high bailiff applies with equal force to that of the bailiffs. Except in so far as their position is modified by "the County Courts Acts," they are on the same footing as bailiffs of the High Court, so that questions arising between the public and the sheriff and his officers or the high bailiff and his officers are all *in pari materiâ*.

By 30 & 31 Vict. c. 142, s. 22, "Every bailiff duly appointed by a high bailiff or a registrar may serve or execute any process which by any Act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against therein."

Power to arrest for assault.

"If any officer or bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court . . . it shall be lawful for the bailiff of the Court or any peace officers in any such case to take the offender into custody (with or without warrant)" and bring him before the Court (*a*) or a justice. (*b*)

Judgment having been recovered against S. in the County Court of L., and a warrant issued for his commitment; the warrant was sent to the clerk of the County Court of S. who issued it to the high bailiff of that Court to execute. Two bailiffs of the latter Court proceeded to plaintiff's factory to search for S. They

(*a*) This is *semble* optional. *Smith* v. *Pritchard*, *infra*.
(*b*) 9 & 10 Vict. c. 95, s. 114.

broke in, and during the search one of them was assaulted by plaintiff. They then left the factory and soon after returned and took plaintiff into custody under the above section. The declaration was (1) for breaking and entering, and (2) assault and false imprisonment. It was held that the high bailiff of the County Court of S. and the two bailiffs were liable on the first count, that the bailiffs were acting under colour of the writ when they broke and entered the factory and so the high bailiff was liable for the acts of his officers; but that the high bailiff was not liable on the second count—that the bailiffs were not then acting under colour of the writ, but by virtue of the above section. (*a*)

(*a*) *Smith* v. *Pritchard*, 8 C. B. 565.

Execution.

Execution. The two usual modes of execution in the County Court are:

Execution on goods and chattels and warrant of possession in cases of ejectment.

To these may be added the writ of attachment for contempt of Court.

Execution on Goods.

Execution on goods. Execution on goods issuing from the County Court is a proceeding almost identical with that of the sheriff under the writ of *fi. fa.* (*q. v.*) The power to break doors is also as stated under that writ. (*a*)

Breaking doors.

Valid execution By 9 & 10 Vict. c. 95, s. 96, Every bailiff or officer executing any process or execution issuing out of the said County Court against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, or the tools and implements of his trade to the value of £5, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any such execution shall have issued as aforesaid."

As to what has been held to come within this section, see *ante*, pp. 25 to 28.

(*a*) *Ante*, p. 23.

Sale.

Sale.

By s. 106, No sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken, and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, to be put in possession by the bailiff.

Bailiffs may act as brokers.

Bailiffs duly authorized by the judge "may without other license in this behalf do and perform all the duties and shall be entitled to the poundage which sworn brokers or appraisers may now do and perform and are entitled to under the said Act." (*a*)

As to the duties on sale of the goods see *ante*, p. 28.

Execution to be superseded on payment of debt and costs.

In or upon every warrant of execution issued against the goods and chattels of any person whomsoever the clerk of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged with the sums allowed by this Act (*b*) as increased costs for the execution of such warrant, and if the party against whom such execution shall be issued shall before an actual sale of the goods and chattels pay or cause to be paid or tendered to the clerk of the Court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs,

(*a*) 12 & 13 Vict. c. 101, s. 10.
(*b*) *Post*, p. 82.

together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty."(*a*)

High bailiff to hold securities.

"The high bailiff is to hold any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money which shall have been so seized or taken as aforesaid as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff." (*b*)

Execution out of jurisdiction.

S. 104 provides for executions out of the jurisdiction of the Court issuing the warrant.

(*a*) 9 & 10 Vict. c. 95, s. 109. (*b*) S. 97.

Warrant of Possession.

Warrant of possession.

This is the mode of execution resorted to in actions of ejectment in order to deliver the possession to the plaintiff. It is confined to tenements of an annual value of not more than £20. (*a*)

Breaking doors.

As to the power to break doors under this warrant, see "Possession," *ante*, p. 38.

By 19 & 20 Vict. c. 108, it is laid down :—

Entry.

S. 55. "Any warrant to a high bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein with such assistants as he shall deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of 9 in the morning and 4 in the afternoon."

Continuance of warrant.

S. 56. "Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery or possession of the premises in question, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served."

(*a*) 30 & 31 Vict. c. 142, s. 11.

ATTACHMENT.

Attachment.

The power of the Court to attach for disobedience to its orders is in many cases as large as that of the High Court. (*a*)

Breaking doors.

As to the power to break doors see under "Attachment," *ante*, p. 32.

The following sections of 9 & 10 Vict. c. 95, refer presumably to imprisonment for debt, which by section 5 of the Debtors Act, 1869, is now confined to cases where the debtor has the means of paying and refuses to pay. (*b*)

Power under order.

Whenever any order of commitment shall have been made, the clerk of the Court shall issue under the seal of the Court a warrant of commitment directed to one of the bailiffs of any County Court, who by such warrant shall be empowered to take the body of the person against w hm such order shall be made." (*c*)

To be superseded on payment.

Any person imprisoned under this Act, who shall have paid or satisfied the debt or demand or the instalments thereof payable and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order and all subsidiary costs, shall be discharged out of custody upon the certificate of such payment or satisfaction signed by the clerk of the Court by name or the judge of the Court in which the order of imprisonment was made." (*d*)

(*a*) See *Ex parte Martin*, 4 Q. B. D. 212; *Richards* v. *Cullerne*, 7 *Ib.* 624; *R.* v. *Judge of Surrey County Court*, 13 *Ib.* 966.

(*b*) See *ante*, p. 34.

(*c*) Sec. 102.

(*d*) S. 110.

Bankruptcy.

Bankruptcy. Warrant.

"Any person acting under the warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be, and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor." (*a*)

Seizure.

Search.

Warrants of the first kind are declared to be of the same force and subject to the same privileges as those of justices, and search warrants the same as those issued in the case of property supposed to have been stolen. (*b*)

As to the duties in execution where the person against whom execution issues is declared bankrupt, see *ante*, p. 40.

(*a*) 46 & 47 Vict. c. 52, s. 51.
(*b*) S. 119, and see *infra*, Pt. VII., "Warrants."

LANDLORD.

Right of landlord.

By 19 & 20 Vict. c. 108, s. 75, "s. 1 of 8 Anne, c. 14, shall not apply to goods taken in execution under the warrant of a County Court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution of distress as shall satisfy first the costs of and incident to the sale, next the claim of such landlord not exceeding the rent of four weeks, where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant issued."

As to the rules laid down concerning the landlord's interest, see *ante*, p. 41.

The section does not authorize the distraint and sale of goods of a stranger on the premises. (*a*) Where they are so distrained, the landlord is not entitled to arrears of rent under this section. (*b*)

(*a*) *Beard* v. *Knight*, 27 L. J. Q. B. 359.
(*b*) *Wilcoxon* v. *Searby*, 29 L. J. Ex. 154.

PROCEDURE.

Summary remedy against defaulting high bailiff,

"In case any bailiff of the said Court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then, upon complaint of the party aggrieved by reason of such neglect, connivance or omission (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court." (*a*)

Extortion.

"If any clerk, bailiff, or officer of the Court acting under colour or pretence of the process of the said Court shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money

(*a*) 9 & 10 Vict. c. 95, s. 115.

so levied as aforesaid, and for the due payment of such damages and costs as he shall think just." (*a*)

Fees allowed.

By s. 106 bailiffs are allowed 6*d.* in the pound for appraisement, and 1*s.* in the pound on the proceeds of the sale.

Action may be transferred to adjoining Court.

"If an action be brought against an officer of a County Court the summons may issue in the district of which he is an officer, or in any adjoining district the judge of which is not the judge of the Court of which the defendant is an officer." (*b*)

(*a*) *Ib.* s. 116. (*b*) 19 & 20 Vict. c. 108, s. 21.

Statutory Protection.

Protection of officers.

The following enactments have for their object the protection of officers in case of actions arising against them.

Proceedings under 9 & 10 Vict. c. 95.

By 9 & 10 Vict. c. 95, s. 138, All actions and prosecutions to be commenced against any person for anything done in pursuance of *this* Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed and not afterwards or otherwise, and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action, and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into Court with costs by or on behalf of defendant.

If the bailiff of a County Court under a warrant against the goods of A. by mistake takes those of B., this is an act done in pursuance of the County Courts Acts, which entitles the bailiff to notice of action. (*a*)

Action for recovery of tenements.

The following relate to those cases where the officer proceeds under warrant of the Court. By 9 & 10 Vict. c. 95, s. 124, no action shall be brought against any bailiff or other person by whom such warrant (of possession) may be executed or summons affixed for executing such warrant or affixing such summons, by reason that the person by whom the same shall be sued out had not

(*a*) *Burling* v. *Harley*, 3 H. & N. 271.

Officer proceeding under warrant.

lawful right to the possession of the premises. And by 13 & 14 Vict. c. 61, s. 19, "No action shall be brought against any high bailiff or bailiff, or against any person or persons acting by the order or in aid of any high bailiff, for anything done in obedience to any warrant under the hand of the clerk or clerks of the said Court, and the seal of the said Court, until demand hath been made or left at the office of such high bailiff by the party or parties intending to bring such action, or by his, her or their attorney or agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant and the same hath been refused or neglected by the space of six days after such demand, and in case after such demand and compliance therewith by shewing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such high bailiff, bailiff, or other person or persons acting in his aid for any such cause as aforesaid without making the clerk or clerks of the said Court who signed or sealed the said warrant, defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants notwithstanding any defect of jurisdiction or other irregularity in the warrant, and if such action be brought jointly against such clerk or clerks and also against such high bailiff or bailiff or person or persons acting in his or their aid as aforesaid, then on proof of such warrant the jury shall find for such high bailiff or bailiff and for such person or persons so acting as aforesaid notwithstanding such defect or irregularity as aforesaid, and if the verdict shall be given against the said clerk or clerks, that in such case the plaintiff or plaintiffs shall recover his, her or their costs against him or them to be taxed in such

manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid." (*a*)

This section and 15 & 16 Vict. c. 54, s. 6, *infra*, protect the bailiff and his assistants from liability to be sued in an action for seizing the goods of a party under a warrant of the Court signed by the registrar and under the seal of the Court, even if the judge had no jurisdiction to make the order upon which the warrant is founded. (*b*)

By 19 & 20 Vict. c. 108, s. 60, "No officer of a County Court, in executing any warrant of a County Court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs unless the damages awarded shall exceed 40*s*."

Generally.

And by 15 & 16 Vict. c. 54, s. 6, "If any action or suit shall be brought against any person for any thing done in pursuance of this Act or of any other Act relating to County Courts such person may plead the general issue and give the special matter in evidence, and the warrant under the seal of the County Court being produced in any such action or suit shall be deemed sufficient proof of the authority of the said County Court, previous to the issuing of such warrant, and in case the plaintiff in such action

(*a*) Remainder repealed by Stat. Law Rev. Act, 1875.
(*b*) *Aspey* v. *Jones*, 54 L. J. Q. B. 98.

shall have a verdict pass against him, be nonsuit, or discontinue the action or suit, the defendant shall in any of the said cases be allowed full costs as between attorney and client."

In the case of nearly all the officers dealt with in this work there are certain protective enactments which, if not absolutely identical, are very similar to those that have been just cited. Their general tenour and effect will be found discussed *infra*, Part VII., p. 301.

PART III.

REVENUE OFFICERS. CUSTOMS, EXCISE, TAXES AND POST OFFICERS.

Customs Officers.

Customs officers.

The powers and duties of customs officers are for the most part contained in the Customs Laws Consolidation Act. (*a*)

Boarding ships.

Their power to board ships is as follows:—

"The proper officers of the customs may board any ship arriving at any port in the United Kingdom or the Channel Islands and stay on board until all the goods laden therein shall be duly delivered therefrom, or until her departure, and shall have free access to every part thereof." (*b*)

By s. 52 commissioned ships, whether British or foreign, may be as freely entered as merchant ships.

"Any collector or other proper officer of customs may go on board any coasting ship in any port or place in the United Kingdom, or at any period of her voyage." (*c*)

"Any officer of customs or other person duly employed for the prevention of smuggling may go on board any ship or boat which shall be within the limits of any port of the United Kingdom or the Channel Islands, and remain

(*a*) 39 & 40 Vict. c. 36. (*b*) S. 47. (*c*) S. 147.

on board such ship or boat as long as she shall continue within the limits of such port." (*a*)

"Any officer of customs may go on board any ship after clearance outwards within the limits of any port in the United Kingdom, or within one league of the coast." (*b*)

Entry of premises.

They may also under writs of assistance or justices' warrants enter premises.

"All writs of assistance issued from the Court of Exchequer or other proper Court shall continue in force during the reign for which they were granted, and for six months afterwards, and any officer of customs or person acting under the direction of the Commissioners of Customs having such writ of assistance or any warrant issued by a justice of the peace, may, in the daytime, enter into any house, shop, cellar, warehouse, room or other place." (*c*) Such a writ does not confer a general and absolute authority to enter and search houses for smuggled goods, but such entry and search must be justified by reference to the event or probable cause. (*d*)

"If any officer of customs shall have reasonable cause to suspect that any uncustomed or prohibited goods are harboured, kept or concealed in any house or other place, either in the United Kingdom or the Channel Islands, and it shall be made to appear by information on oath before any justice of the peace in the United Kingdom or the Channel Islands, it shall be lawful for such justice by special warrant under his hand to authorize such officer to enter such house or other place." (*e*)

Demand documents.

In the case of coasting ships they may after boarding "demand all documents which ought to be on board such ship, and may require all or any such documents to be

(*a*) *Ib.* s. 182. (*b*) S. 134. (*c*) S. 204.
(*d*) *R.* v. *Watts*, 1 B. & Ad. 166. (*e*) 39 & 40 Vict. c. 36, s. 205.

brought to them for inspection" (*a*), and where the ship has cleared and they have boarded her they may demand the ship's clearance. (*b*)

Specifications for free goods must be delivered by the exporter six days after clearance (*c*), and the master or owner must deliver a manifest of goods shipped for which no bond is required, unless a declaration accompanies such specification that it contains a true account of such goods, and in the case of steamships a certificate of coal to be used on board must be furnished. (*d*)

Search.

In *R.* v. *Ackers* (*e*) Lord Kenyon said: "Where the officers have an information of smuggled goods, which confers a ground to warrant a search, persons obstructing them in their search or in the discharge of their duty are liable to an information for the obstruction whether smuggled goods are found or not. But the officers search at their peril."

Coasting ships are liable to search (*f*), and in the case of ships in port the officers may rummage and search the cabin and all other parts of such ship or boat for prohibited or uncustomed goods. (*g*)

By s. 52 commissioned ships, British or foreign, having goods on board, "shall be liable to such searches as merchant ships are liable to."

Houses.

The officers may search houses under ss. 204 and 205 above cited.

Persons.

"Any officer of customs or other person duly employed in the prevention of smuggling (*h*) may search any person on board any ship or boat within the limits of any port

(*a*) *Ib.* s. 147. (*b*) S. 134. (*c*) 44 & 45 Vict. c. 12, s. 11.
(*d*) 47 & 48 Vict. c. 62, s. 3. (*e*) 6 Esp. 125 (n.).
(*f*) 39 & 40 Vict. c. 36, s. 147. (*g*) S. 182.
(*h*) These words include "coastguard."

in the United Kingdom or the Channel Islands, or any person who shall have landed from any ship or boat, provided such officer or other person duly employed as aforesaid shall have good reason to suppose that such person is carrying or has any uncustomed or prohibited goods about his person." (*a*) But "before any person shall be searched he may require to be taken with all reasonable despatch before a justice or before the collector or other superior officer of customs, who shall if he see no reasonable cause for search discharge such person, but if otherwise, direct that he be searched, and if a female she shall not be searched by any other than a female." (*b*)

Breaking open. With regard to breaking open doors and packages, "if any place or any box or chest be locked and the keys be withheld, any examining or superior officer may open any such place, box or chest in the best manner in his power." (*c*)

Contents unknown. "If the contents of any package intended for exportation shall be reported by the master as being unknown to him, the officers of the customs may open and examine such package on board such ship." (*d*)

Goods for shipment. "And it shall be lawful for such officers to open and examine all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing such goods and the weighing, re-packing, landing (when water-borne), and the shipping thereof, shall be done by or at the expense of the exporter." (*e*)

Salmon parcels. And between the 3rd of September and the 2nd of February they may open any parcel entered or intended for exportation or brought to any quay, wharf, or other

(*a*) 44 & 45 Vict. c. 12, s. 12. (*b*) 39 & 40 Vict. c. 36, s. 185.
(*c*) S. 47. (*d*) S. 54. (*e*) S. 102.

place for that purpose and suspected to contain salmon. (*a*)

Goods on premises.

By ss. 204, 205 the officers may, in case of resistance, break open any door, closets, trunks and other packages, and force and remove any other impediment or obstruction to such entry, search, or seizure.

Fasten down hatchway

Power to fasten down hatchways is conferred by s. 47.

Examination.

Packages, the contents of which are unknown (*b*), and goods generally for shipment may be examined. (*c*)

Carts, &c.

By s. 147 it is lawful to examine all goods on board, and all goods then lading or unlading, on coasting ships, and by s. 203, "Any officers of customs, excise, coastguard, constabulary, police, or other person duly employed for the prevention of smuggling may, upon reasonable suspicion or probable cause, stop and examine any cart, wagon, or other conveyance to ascertain whether any smuggled goods are contained therein."

Taking samples.

"The officers of customs may on the entry of any goods, or at any time afterwards, take samples of such goods." (*d*)

Seizure.

"All ships, boats, goods, carriages, or other conveyances, together with all horses and other animals and things liable to forfeiture, and all persons liable to be detained for any offence under the Customs Acts or any other Act whereby officers of customs are authorized to seize or detain persons, goods, or other things, shall or may be seized or detained in any place either upon land or water by any of the following persons, being duly employed for the prevention of smuggling, that is to say, any officer of Her Majesty's army, navy, marines, coastguard, customs or excise, or by any person having authority from the Commissioners of Customs or Inland Revenue to seize, or

(*a*) 28 & 29 Vict. c. 121, s. 65. (*b*) 39 & 40 Vict. c. 36, s. 54.
(*c*) S. 102. (*d*) S. 70.

being any constable or police officer of any county, city or borough in the United Kingdom so employed with the sanction of the magistrates having jurisdiction therein, or under or by virtue of any Act in relation thereto." (*a*)

Under this section a custom-house officer has authority to seize uncustomed goods with the carriage and horses carrying off the same, though outside the limits of the particular port of which he is denominated an officer in his diploma from the Commissioners of Customs. (*b*)

Goods prohibited to be imported are :—

Beer.
Books, Copyright.
Cards.
Cattle, or any hides, &c., proclaimed by Privy Council.
Chicory.
Chloral hydrate.
Chloroform.
Chocolate.
Clocks—British manufacture.
Cocoa.
Coffee.
Coin, false.
Collodion.
Ether.
Ethyl, Iodide of.
Foreign manufactured articles.
Fruit.
Malt Extract.
Mum.
Naphtha.
Plate.
Prints, indecent.

(*a*) *Ib.* s. 202. (*b*) *R.* v. *Barfoot*, 13 East, 506.

Soap, containing spirit.
Snuff.
Spirits.
Spruce.
Tea.
Tobacco.
Varnish.
Watches—British manufacture.
Wine. (*a*)

The offences consist of:—

Failing to enter goods properly.
Failing to export goods duly.
Failing to report cargo.
Making false declarations.
Smuggling. (*b*)

Goods found on premises entered under warrant are also liable to seizure. (*c*)

Salmon.

Landing goods at an unauthorized time and place renders them liable to forfeiture. (*d*) So also does the exportation of salmon between the 3rd September and 2nd February, or if unclean; and if it become unfit for food, such salmon may be destroyed. (*e*)

Harbour dues.

By 10 Vict. c. 27, s. 48, the collector or other proper officer for the district within which a harbour, dock, or pier is situate, may withhold a clearance to any vessel until the (harbour) rates are paid, and where there is a dispute until sufficient security is given for their payment when ascertained together with expenses.

(*a*) The amount of duty chargeable on these articles varies with the Customs and Inland Revenue Act passed annually.
(*b*) 39 & 40 Vict. c. 36. (*c*) SS. 204, 205.
(*d*) 44 & 45 Vict. c. 12, ss. 9, 10.
(*e*) 26 & 27 Vict. c. 10, s. 3, and 28 & 29 Vict. c. 121, s. 65.

Detention by police.

"If any such goods liable to duties of customs or prohibited to be imported, or in any way restricted, shall be stopped or taken by any police officer on suspicion that the same had been feloniously taken, he may carry the same to the police office to which the offender, if detained, is taken, there to remain until and in order to be produced at the trial of such offender." (*a*)

Arrest.

"If any person contrary to the Customs Acts shall make or cause to be made, or aid or assist in making any such signal (*b*), he shall be guilty of a misdemeanour, and may be stopped, arrested, detained, and conveyed before any justice." (*c*)

As to arrest of offenders generally, see s. 202. (*d*)

Subsequent.

"If any person liable to be detained under the Customs Acts shall not be detained at the time of committing the offence, or being detained shall escape, he may afterwards be detained at any place in the United Kingdom within three years from the time such offence was committed, and if detained may be taken before any justice to be dealt with as if he had been detained at the time of committing such offence." (*e*)

By 44 & 45 Vict. c. 12, s. 12, persons may also be arrested for receiving goods or persons, or assaulting or obstructing officers, or attempting any of those offences.

A defendant arrested by *capias* under 3 & 4 Will. 4, c. 53, s. 95, for an offence against the Customs Acts, was held not to be entitled to be discharged out of custody on the ground that no information was filed before issue of the *capias*. (*f*)

Infected ships.

In the case of infected ships arriving from abroad,

(*a*) 39 & 40 Vict. c. 36, s. 206. (*b*) *I.e.*, a signal to smugglers.
(*c*) S. 190. (*d*) *Ante*, p. 91. (*e*) S. 199.
(*f*) *Att.-Gen.* v. *Reilly*, 12 M. & W. 217.

persons may be detained on board until permission to land is given by the officer of custom appointed to ascertain and examine the state of health of persons on board such ships. (*a*)

Securing goods.

The proper officer may mark any goods before landing, and lock up, seal, mark, or otherwise secure any goods on board ship. (*b*)

Queen's warehouse.

Goods seized may be put in the Queen's warehouse. As to commissioned ships by s. 52, packages opened by s. 54, and as to goods found on searched premises by ss. 204, 205.

Firing on ship not bringing to.

"If any ship or boat liable to seizure or examination under the Customs Act be chased by any vessel or boat in Her Majesty's navy having the proper pendant and ensign of Her Majesty's ship hoisted, or by any vessel or boat duly employed for the prevention of smuggling having a proper pendant and ensign hoisted, it shall be lawful for the captain, master, or other person having the charge or command of such vessel or boat in Her Majesty's navy, or employed as aforesaid (first causing a gun to be fired as a signal), to fire at or into such ship or boat." (*c*)

Forfeited goods.

"All ships, boats, carriages or other conveyances, together with all horses and other animals and things made use of in the importation, landing, removal, or conveyance of any uncustomed, prohibited, restricted, or other goods liable to forfeiture under the Customs Acts shall be forfeited." (*d*)

The same applies to concealed goods (*e*), and to goods prohibited from being imported. (*f*)

Master to answer questions.

"The master of every ship arriving from parts beyond the seas shall at the time of making report answer all

(*a*) 39 & 40 Vict. c. 36, s. 234. (*b*) S. 47. (*c*) S. 181.
(*d*) S. 202. (*e*) S. 47. (*f*) S. 54.

such questions relating to the ship, cargo, crew and voyage as shall be put to him by the collector or other proper officer." (*a*)

Masters of ships in ballast desiring clearance are subject to the same rule. (*b*)

Merchant shipping.

As to the powers of customs officers under the Merchant Shipping Acts, see *post*, p. 245.

Where inquiry instituted.

"In any of the cases following; that is to say (*c*):

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive, or are found at any place in the United Kingdom;

It shall be lawful for the inspecting officer of the coast-guard, or the principal officer of customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coast of the United Kingdom, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found, or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade to make inquiry respecting such loss, abandonment, damage, or casualty, and he shall for that purpose have

(*a*) *Ib.* s. 53. (*b*) S. 133.
(*c*) 17 & 18 Vict. c. 104, s. 432.

all the powers given by the first part of this Act to inspectors appointed by the said Board. (*a*)

Customs officers to exercise excise powers where necessary.

By 7 & 8 Geo. 4, c. 53, s. 38, "every officer of customs shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, or any British spirits forfeited under this Act or any other Act or Acts of Parliament relating to the revenue of excise as are or shall be granted or shall or may be used or exercised in that behalf by any officer of excise." (*b*)

The following are the powers conferred on officers under the Sea Fisheries Act.

Sea fisheries.

"For the purpose of enforcing the provisions of this Act and of any Order in Council under this Act or under the Sea Fisheries Act, 1868, as amended by this Act, a British sea-fishery officer may with respect to any sea-fishing boat within the exclusive limits of the British Islands and with respect to any British sea-fishing boat outside of those limits, exercise the following powers:—

Board.

(1.) He may go on board it.

Demand documents.

(2.) He may require the owner, master, and crew, or any of them, to produce any certificates of registry, licences, official log-books, official papers, articles of agreement, muster rolls, and other documents relating to the boat or to the crew or to any member thereof or to any person on board the boat, which are in their respective

(*a*) These powers will be found stated under s. 15, *post*, p. 245.

(*b*) *Post*, p. 100 *et seq.*

possession or control on board the boat, and may take copies thereof or of any part thereof.

Muster crew.

(3.) He may muster the crew of the boat.

Master to answer questions.

(4.) He may require the master to appear and give any explanation concerning his boat and his crew and any person on board his boat, and the said certificates of registry, licences, official log-books, official papers, articles of agreement, muster rolls, and other documents, or any of them.

Examine tackle.

(5.) He may examine all sails, lights, small boats, anchors, grapnels and fishing implements belonging to the boat.

Seize destructive instruments.

(6.) He may seize any instrument serving only or intended to damage or destroy fishing implements by cutting or otherwise which is found on board the boat or in the possession of any person belonging to the boat.

Make inquiry.

(7.) He may make any examination or inquiry which he deems necessary to ascertain whether any contravention of the provisions of this Act or of any such Order in Council as aforesaid has been committed, or to fix the amount of compensation due for any damage done to another sea-fishing boat, or to any person or property on board thereof or belonging thereto, and may administer an oath for such purpose.

Arrest of offender and boat.

(8.) In the case of any person who appears to him to have committed any such contravention he may, without summons, warrant, or other process, both take the offender and the boat to which he belongs, and the crew thereof, to the

nearest or most convenient port and bring him or them before a competent Court, and detain him, it and them in the port until the alleged contravention has been adjudicated upon." (*a*)

Extent of powers.

"For the purpose of carrying into effect the convention (*b*) and of exercising and performing the powers and duties thereby vested in and imposed on cruisers and commanders of cruisers, a foreign sea-fishery officer may with respect to any British sea-fishing boat, and any sea-fishery officer, whether British or foreign, may, with respect to any foreign sea-fishing boat to which this Act for the time being applies, exercise any of the powers conferred by this Act on British sea-fishery officers.

Provided that:—

(*a.*) Nothing in this section shall authorize a sea-fishery officer to do anything not authorized by the convention, and

(*b.*) The port to which any sea-fishing boat or any person belonging thereto is taken shall, except where the nationality of such boat is not evidenced by official papers, be a port of the state to which such boat belongs." (*c*)

(*a*) 46 & 47 Vict. c. 22, s. 12.
(*b*) To regulate the Fisheries in the North Sea.
(*c*) S. 13.

Excise Officers.

The general powers of officers of the excise are derived from 7 & 8 Geo. 4, c. 53. But besides this general Act there are other statutes dealing with special subjects, *e.g.*, intoxicating liquors.

Demand. Gun licence and name and address.

"It shall be lawful for any officer of inland revenue, or for any officer of constabulary or any constable, to demand from any person using or carrying a gun (not being a person in the naval, military or volunteer service of Her Majesty or in the constabulary, or other police force, using or carrying a gun in the performance of his duty), the production of a licence granted to such person under this Act.

"If the person upon whom the demand is made shall not produce a licence duly granted to him under this Act, or a licence or certificate to kill game granted to him under the laws of excise, and permit the officer or constable demanding the production thereof to read such licence or certificate, it shall be lawful for such officer or constable to require such person to declare to him immediately his christian and surname and place of residence." (*a*)

Distraint. Brewer.

(1.) If any duty payable by a brewer remains unpaid after the time within which it is payable, the collector may, by warrant, signed by him, empower any person to distrain all beer, malt or other materials for brewing, vessels and utensils belonging to the brewer, or in any premises in the use or possession of the brewer, or in any premises in the use or possession of the brewer or

(*a*) 33 & 34 Vict. c 57, s 9.

of any person on his behalf or in trust for him, and to sell the same by public auction, giving six days previous notice of the sale.

(2.) The proceeds of sale shall be applied in or towards payment of the costs and expenses of the distress and sale, and in or towards payment of the duties due from the brewer, and the surplus, if any, shall be paid to the brewer.

(3.) In the event of any beer, malt or other materials being so distrained, the brewer may, at any time before the day appointed for the sale, remove the whole or any part thereof on paying to the collector in or towards payment of the duty, the true value of the beer, malt or other materials. (*a*)

Distiller.

A similar provision as to distillers is contained in 43 & 44 Vict. c. 24, s. 48, with the additional clause that permits for removal shall on application be granted as if the distress had not been made.

Entry, general.

Any officer of excise and his assistants may at any time either by night or day (but if between the hours of eleven at night and five in the morning, then upon request and in the presence of a constable or other lawful peace officer, except in such cases as are otherwise specially provided for by any other Act or Acts of Parliament relating to the revenue of excise) enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business under or subject to any law or laws of excise, or belonging to or used by any person or persons making or required to

(*a*) 43 & 44 Vict. c. 20, s. 17.

make an entry of such building or place under any such law or laws. (*a*)

Where the presence of a peace officer is required, an officer by representation attending the rotation justices is not sufficient. (*b*)

Brewery. "An officer may at any time, either by day or night, enter any part of the entered premises of a brewer for sale." (*c*)

Adjoining premises. "If such officer shall find any concealed pipe or conveyance, he may enter any house in the possession of any other person into which such pipe or conveyance may lead." (*d*)

Brewing premises other than for sale. "Any officer may at all reasonable times enter and inspect any premises used for the purpose of brewing by a brewer other than a brewer for sale." (*e*)

Distillery. "An officer may at any time, either by day or by night, enter any part of the premises of a house or place whatsoever belonging to or made use of by a distiller or rectifier." (*f*)

Lands. "It shall be lawful for any officer of inland revenue, officer of constabulary or constable, who may see any person using or carrying a gun, to enter and remain so long as may be necessary upon any lands or upon any premises (other than a dwelling-house or the curtilage thereof) for the purpose of making the demand specified in the preceding section." (*g*)

Methylator. "An officer may in the daytime enter and inspect the

(*a*) 7 & 8 Geo. 4, c. 53, s. 22.

(*b*) *Hill* v. *Barnes*, 2 W. Bla. 1135.

(*c*) 43 & 44 Vict. c. 20, s. 29 (1); in the interpretation clause of this Act "beer" is said to include "cider," and "cider" to include "perry."

(*d*) S. 30 (2). (*e*) S. 35.

(*f*) 43 & 44 Vict. c. 24, s. 137 (1).

(*g*) 33 & 34 Vict. c. 57, s. 10, *ante*, p. 100.

premises of an authorized methylator or a retailer of methylated spirits, or any premises of a person authorized to receive methylated spirits." (*a*)

[Dealers in plate require to be licensed by 30 & 31 Vict. c. 90.] Plate.

"An officer may at any time enter the premises of a dealer or retailer." (*b*) Retail spirit dealer.

"Any officer of excise may at any time (but between ten in the evening and six in the morning only with the assistance of a constable or other peace officer) enter into any workhouse, store-house, room, shop or place made use of by any manufacturer or dealer in or retailer of tobacco or snuff for the manufacturing, keeping or selling of any tobacco or snuff, and inspect and examine all tobacco and snuff therein." (*c*) Tobacco.

[With this section must be read 30 & 31 Vict. c. 90, s. 10, which is to the same effect, except that the presence of a constable is required between eleven in the evening and five in the morning.]

[Vinegar factories are required to be entered by 7 & 8 Vict. c. 25, s. 3.] Vinegar

"Any officer of excise during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open, may enter into every house, cellar, room or place entered for the storing, keeping or retailing of wine to be consumed as aforesaid." (*d*) Wine retailer.

"Any officer of excise and his assistants may inspect any building or place, and take such account as such officer shall deem necessary according to the several *Examination* and taking account.

(*a*) 43 & 44 Vict. c. 24, s. 127 (1). (*b*) S. 141.
(*c*) 3 & 4 Vict. c. 18, s. 3. (*d*) 23 & 24 Vict. c. 27, s. 24.

laws, provisions and regulations relating thereto, of all matters and things and of all works, vessels, utensils, goods and materials belonging or in any wise appertaining to such trade or business." (*a*)

Brewery. "He may take an account of the materials used or to be used in brewing and of the worts and beer produced (*b*), and in the case of premises other than those of a brewer for sale, examine the vessels and utensils used by him for the purposes of brewing." (*c*)

Distillery. (1.) For the purpose of testing the quantity of spirits at proof in any wash by distillation, the proper officer may require any charger or receiver in a distillery to be emptied and cleaned, and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver. For this purpose all persons in the employ of the distiller must on request and on reasonable notice provide the officer with assistance and fuel.

(2.) All low wines, feints and spirits so distilled and conveyed into a charger or receiver must be kept therein unmixed with any other things until the officer has taken an account of the quantity and strength thereof. (*d*)

He may also "examine, gauge, and take an account of any still or other vessel or utensil therein, and also any spirits or materials for the manufacture of spirits therein" (*e*), and where a concealed pipe is discovered, "examine whether any such pipe or conveyance conveys or conceals any spirits or any liquor used in the manufacture of spirits, so as to prevent a true account thereof from being taken." (*f*)

(*a*) 7 & 8 Geo. 4, c. 53, s. 22.
(*b*) 43 & 44 Vict. c. 20, s. 29.
(*c*) S. 35.
(*d*) 43 & 44 Vict. c. 24, s. 40.
(*e*) S. 137 (1).
(*f*) S. 139.

A methylator's stock can only be examined in the daytime. (*a*)

Spirit retailer. Tobacco. Wine retailer.

A spirit retailer's stock may be inspected and examined at any time (*b*), and so may that of a tobacco manufacturer, dealer or retailer (*c*), but the stock of a wine retailer can only be examined while the house is open for the sale of liquor. (*d*)

Spirits in transit.

Spirits being removed from one place to another may be detained and examined. (*e*)

Samples. Beer.

(1) An officer may take such samples as he may deem necessary of any worts or beer or materials for brewing in the possession of any brewer for sale.

(2) The brewer may if he wishes, before any such sample is taken, stir up and mix together all such worts, beer or materials from which the sample is taken. (*f*)

Spirits.

"An officer may take a sample of any wort, wash, low wines, feints or spirits from any vessel or utensil in a distillery, and the gravity or strength of any sample so taken shall be deemed the gravity or strength of the whole contents of the vessel or utensil from which it is taken" (*g*), and in the case of methylated spirits and spirits of a retailer he may "take samples of any such spirits, paying for any sample so taken the usual price thereof." (*h*)

Search. Brewery.

A brewer's premises, if there is reason to suspect the existence of concealed pipes, may be searched to ascertain if this is the fact. (*i*)

(*a*) 43 & 44 Vict. c. 24, s. 127 (1). (*b*) S. 141.
(*c*) 3 & 4 Vict. c. 18, s. 3, *ante*, p. 103.
(*d*) 23 & 24 Vict. c. 27, s. 24.
(*e*) 43 & 44 Vict. c. 24, s. 145 (1).
(*f*) 43 & 44 Vict. c. 20, s. 26.
(*g*) 43 & 44 Vict. c. 24, s. 42 (1). (*h*) SS. 127, 141.
(*i*) 43 & 44 Vict. c. 20, s. 30.

Distillery. The same as to a distillery to find stills or materials of manufacture. (*a*)

Wine retailer. In the case of a wine retailer an officer may "make search for all spirits which may be found in any such house, cellar, room or place." (*b*)

Officers may recover possession of warrant. In *R.* v. *Mitton* (*c*) excise officers went with a search warrant, and at the desire of the plaintiff gave it to him for his perusal, when he refused to return it: *Held,* that they had a right to take it from him, and even to coerce his person to obtain the possession of it, provided they used no more violence than was necessary.

Breaking. Brewer's premises. "If an officer after having demanded admission into the entered premises of a brewer for sale, and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer and any person acting in his aid may at any time either by day or night (but at night only in the presence of an officer of the peace) break open any door or window of the premises or break through any wall thereof for the purpose of obtaining admission." (*d*)

Adjoining premises. "If any officer has reason to suspect that any private or concealed pipe, or conveyance, or vessel is kept or made use of by a brewer for sale, he may, either by day or night (but at night only in the presence of an officer of the peace), break open any part of the premises of such brewer, and forcibly enter therein, and may break up the ground in or adjoining such premises or any wall thereof to search for such private or concealed pipe, or conveyance, or vessel" (*e*); and if any pipe be found

(*a*) 43 & 44 Vict. c. 24, s. 137 (1).
(*b*) 23 & 24 Vict. c. 27, s. 24.
(*c*) 3 C. & P. 31.
(*d*) 43 & 44 Vict. 20, s. 29 (2).
(*e*) S. 30 (1).

communicating with an adjoining house he "may break up any part of such house or premises to search for the vessel communicating with such pipe." (*a*)

"If an officer, after having demanded admission into the premises of a distiller or rectifier and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer and any person acting in his aid may at any time, either by day or night (but at night only in the presence of an officer of the peace), break open any door or window of the premises or break through any wall thereof for the purpose of obtaining admission." (*b*) *Distillery.*

"Any officer or person acting in his aid may, either by day or by night, for the purpose of searching for any pipe, cock, conveyance, or utensil, break up the ground in or adjoining or near the premises of a distiller or rectifier, or any wall or partition of his premises or any other place, and may, on finding any pipe or conveyance leading to or from the premises, break up or break any ground, house, wall, or other place through or into which the pipe or conveyance leads, and may break up or cut away any such pipe or conveyance, and turn any such cock." (*c*)

"All goods, commodities, and chattels whatsoever forfeited under or by virtue of this Act or any Act or Acts of Parliament relating to the revenue of excise, shall and may be seized by any officer or officers of excise or person or persons employed in the revenue of excise or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid." (*d*) *Seizure.*

Mere possession of prohibited goods is *semble* sufficient

(*a*) *Ib.* s. 30 (2).
(*b*) 43 & 44 Vict. c. 24, s. 137 (2).
(*c*) S. 139.
(*d*) 7 & 8 Geo. 4, c. 53, s. 64.

to warrant a seizure without any evidence of intention to employ them illegally. (*a*)

Spirits found on wine retailer's premises.

All spirits found on the premises of a wine retailer may be seized. (*b*)

Goods liable to duty are: Beer, cards, chicory, cider, coffee, patent medicines, perry, plate, snuff, spirits, sweets, tobacco, wine. (*c*)

Deposit of seized goods.

"All goods or commodities whatsoever which are or shall be prohibited, or which are or shall be subject to any duty or duties of excise, and which shall be stopped, detained, or taken by any police officer, or peace officer, or any other person under or by virtue of any Act or Acts of Parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed to and deposited and lodged in the chief office of excise, if the same shall have been stopped, detained, or taken within the limits of the chief office, or in the nearest office of excise if in any other part of the United Kingdom." (*d*)

Arrest. Unentered factories.

Where persons are discovered in unentered excise factories, "any officer and all persons acting in his aid and assistance, may arrest and detain every person so discovered and convey him or her before one or more justices of the peace." (*e*) Under this section, officers may do all that is reasonable by way of arrest and detention for the purpose of having a matter adjudicated upon. (*f*)

(*a*) *Attorney-General* v. *Lockwood*, 9 M. & W. 378.

(*b*) 23 & 24 Vict. c. 27, s. 24.

(*c*) The amount of duty payable varies with the Customs and Inland Revenue Act passed annually.

(*d*) 7 & 8 Geo. 4, c. 53, s. 108.

(*e*) 7 & 8 Geo. 4, c. 53, s. 33.

(*f*) *Evans* v. *M'Cloughlan*, 4 Macq. H. L. Cas. 89.

"Any person who shall be found hawking or carrying about for sale any cards, whether enclosed in a stamped wrapper or not, and who shall sell the same or offer the same for sale at any place for which he shall have no licence, may be apprehended by any constable or officer of Inland Revenue and taken before any justice of the peace." (*a*) Cards.

If such (*b*) person shall refuse to declare his christian and surname and place of residence as aforesaid . . . it shall be lawful for such officer or constable to arrest such person so refusing, and to convey him before any justice of the peace having jurisdiction at the place where the offence shall be committed. (*c*) Person carrying gun

Persons may also be arrested for:—

(1.) The unlawful removal of malt, wort, or wash. (*d*) Removal of malt.

(2.) The unlawful removal of spirits (*e*) or Removal of spirits.

(3.) Hawking and sale of spirits. (*f*) Sale of spirits.

"Any officer of excise or customs may arrest and detain any person who shall hawk or sell or offer for sale any tobacco or snuff in any house or premises, or in or about the streets or highways or other places." [Not to extend to employés of tobacco-dealers travelling for orders.] (*g*) Tobacco.

"If any person liable to be arrested and detained under any Act or Acts relating to the revenue of excise, shall not be detained at the time when he shall be discovered committing the offence for which he is so liable or after detention shall make his escape, any officer of excise may stop, arrest, and detain such person at any time afterwards and convey him before any justice or justices of the peace Subsequent arrest.

(*a*) 25 & 26 Vict. c. 22, s. 31. (*b*) See *ante*, *p.* 100, "*Demand*."
(*c*) 33 & 34 Vict. c. 57, s. 9. (*d*) 43 & 44 Vict. c. 24, s. 144.
(*e*) *Ib.* s 145 (*f*) S. 146.
(*g*) 5 & 6 Vict. c. 93, s. 13.

to be dealt with as if detained at the time of committing the offence." (*a*)

The offences not previously specifically mentioned are:—

Fraudulently removing goods liable to duty. (*b*)

Making out false accounts. (*c*)

Obstructing officers. (*d*)

Sale. Where a levy warrant issues, "the goods and chattels upon which such levy shall be made shall be sold and disposed of as soon as conveniently may be after a certain time to be limited in such warrant for the sale thereof (so as such time be not less than four days nor more than eight days), unless the penalty and penalties or sum and sums of money for which such levy shall be made, shall within the time limited for payment thereof as aforesaid be paid and satisfied." (*e*)

In an action against excise officers for the detention and negligent custody of certain malt, &c., taken under a distress upon a conviction under the Malt Act, 43 Geo. 3, c. 74, it appeared that the plaintiff, having been convicted in a penalty, a warrant issued, directing the defendants to levy the same, and that they seized and removed plaintiff's goods from his premises, and that afterwards he paid the penalty. The defendants, ten days after this payment, brought the goods back to the plaintiff's premises in a damaged state. *Held*, that in order to make the detention unlawful, the plaintiff ought to have demanded the goods, and that, there having been no demand, the detention was not unlawful. (*f*)

Distiller to supply officer with ladders and lights. "Every distiller or rectifier must, on demand by an

(*a*) 4 & 5 Will. 4, c. 51, s. 25. (*b*) 7 & 8 Geo. 4, c. 53, s. 32.
(*c*) S. 44. (*d*) S. 24. (*e*) S. 88.
(*f*) *Hutchings* v. *Morris*, 6 B. & C. 464.

officer made on the premises, either by day or night, and for the purpose of enabling him to search for, examine, gauge, or take an account of any vessel, utensil, spirits, or materials therein, provide ladders of sufficient length and strength, and place them firmly and conveniently, and supply sufficient lights and aids." (*a*)

To draw water off worm-tub if required.

"An officer may require a distiller at any time when his still is not at work to cause the water in any worm-tub in his distillery to be drawn off, and the tub and worm to be cleansed." (*b*)

Production of permit. Tobacco manufacturer.

Manufacturers to show permits which accompanied tobacco received since last visit of officer. (*c*)

Persons removing spirits.

Persons removing spirits in quantities of more than one gallon may be required to produce permit. (*d*)

Excise officers to exercise customs powers when necessary.

"Every officer of excise shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever forfeited under any Act or Acts of Parliament relating to the revenue of the customs, as are or shall be granted, or shall or may be used or exercised in that behalf by any officer of the customs, anything in this Act or in any other Act or Acts of Parliament to the contrary thereof notwithstanding." (*e*)

Oppose force to force.

"If any person armed with any offensive weapon whatsoever, shall with force or violence assault or resist any officer of excise . . . in the execution of his office . . . it

(*a*) 43 & 44 Vict. c. 24, s. 138. (*b*) S. 143 (1).
(*c*) 3 & 4 Vict. c. 18, s. 5. (*d*) 43 & 44 Vict. c. 24, s. 145.
(*e*) 7 & 8 Geo. 4, c. 53, s. 38.

shall be lawful for every such officer to oppose force to force." (*a*)

A person catching up a hatchet accidentally during the hurry and heat of an affray is not "armed with an offensive weapon." (*b*)

But anything that is not in common use for any other purpose but a weapon, is clearly within the terms of the section. (*c*)

(*a*) *Ib.* s. 40. (*b*) *Rose's Case*, 1 Leach, 342 (n.).
(*c*) *Cossan's Case*, 1 Leach, 342 (n.).

Tax Officers.

The power of a collector of taxes in case of non-payment is to distrain the lands, goods, and chattels of the person so in arrear. *Power.*

By 43 & 44 Vict. c. 19, s. 86 (1), If a person refuses to pay the sum charged upon him by virtue of the Land Tax Acts, the Tax Acts, or this Act, on demand made by the collector according to the assessments and warrants to him delivered by the Land Tax and General Commissioners, such collector may, and he is thereunto authorized and required for non-payment thereof to distrain upon the messuages, lands, tenements, and premises charged with such sum of money, or to distrain the person so charged by his goods and chattels, and all such other goods and chattels as the collector is hereby authorized to distrain without any further authority from the said respective commissioners for that purpose than the warrant to such collector delivered on his appointment. *Distraint.* Warrant necessary.

As to the amounts that may be charged for such distresses where the tax is under £20, see 57 Geo. 3, c. 93, s. 1, and 7 & 8 Geo. 4, c. 17. (*a*) Charges.

To authorize a levy for arrears of assessed taxes, it is necessary that those arrears should have been demanded by the collector in person upon the householder in person, or that there should have been a direct refusal of payment to the collector in person. But it is sufficient if a demand have in fact been made by the collector or a person authorized by him, and the householder has refused payment, whether on the ground of inability or for any other

(*a*) *Post*, p. 263.

cause. Nor is it necessary that the collector should in the demand have specified the exact sum. (*a*)

Introduction of constables.

A collector of taxes has no right to take a constable or other person with him into the house of a party of whom he is about to demand the payment of arrears of taxes and to levy a distress for such arrears if necessary, unless he has reasonable ground for apprehending that an assault will be committed upon him or that the distress will be resisted. (*b*)

A collector demands taxes due from D., the owner of a house, and intimates that, in case of the non-payment, he shall distrain, upon which D. threatens A. with personal violence, but ultimately promises to send the amount on a certain day. This promise not being performed, A. goes again to D.'s house and demands the taxes of D., D. leaves the room in which A. is and fastens the outer door: *Held*, that A. was justified in unfastening the door and introducing constables; and that, upon D.'s returning into the room after the introduction of the constables, accompanied by a number of other men, and commanding C., one of the constables, whom he knew to be such, to leave the house, it was the duty of C. and the other constables to remain. (*c*)

Goods of third person.

The collector of a house and window-tax under 43 Geo. 3, c. 161, might, it was held, distrain for arrears of these taxes the goods of a third person found on the premises charged, although the goods are only borrowed, and the person in arrear has other goods of his own on the premises sufficient to satisfy the arrears. (*d*)

Reasonable time must elapse.

A collector having made a demand of land-tax under 38 Geo. 3, c. 5, ss. 9, 17, upon the premises charged

(*a*) *R.* v. *Ford*, 4 N. & M. 451. (*b*) *R.* v. *Clarke*, *ib.* 671.
(*c*) *Ib.* (*d*) *Jason* v. *Dixon*, 1 M. & G. 601.

at a time when the party liable to pay was absent from home and not upon the party himself, and distrained immediately after making such demand, the distress was held to be unlawful: for that before he distrained he was bound to allow a reasonable time to elapse after the demand made, in order that the party liable to pay the tax might have the opportunity of complying with the demand. (*a*)

Must be for a sum actually due.

Plaintiff being vicar of E., and owner and occupier of the vicarial tithes, and being also occupier of the rectorial tithes which belonged to B., and on which the land-tax had been redeemed, was assessed to land-tax in a gross sum for the vicarial and rectorial tithes. The whole of the sum to the quarter-day then last being demanded by defendant, who was collector, plaintiff refused to pay the the sum at which the rectorial tithes had been redeemed, but paid the residue of the assessment. The collector distrained on him under statute 38 Geo. 3, c. 5, s. 17, for the amount withheld. The distress warrant did not specify the property. It was held that the distress was illegal as being for a sum not due, because the assessment should have separated the tithes belonging to different proprietors under 20 Geo. 3, c. 17, s. 3. (*b*)

Breaking doors.

"For the purpose of levying a distress, a collector may, upon warrant under the hands and seals of the said respective commissioners (*c*), obtained for that purpose, break open in the daytime any house or premises, calling to his assistance any constable or other peace officer for the parish, group or division where any refusal, neglect, or resistance shall be made." (*d*)

(*a*) *Gibbs* v. *Stead*, 8 B. & C. 528.
(*b*) *Charleton* v. *Alway*, 11 A. & E. 993.
(*c*) *I.e.*, of Taxes. (*d*) 43 & 44 Vict. c. 19, s. 86 (2).

One warrant for several duties.

One warrant of distress for the amount of several duties imposed by different Acts of Parliament, each giving a power of distress, is legal. (*a*)

Plaintiff neglecting to appeal to the commissioners.

Where a rate of $\frac{1}{10}$th of a penny in the pound on the rateable property in the parish was sufficient to raise the quota which the parish was liable to contribute to the land-tax: but in order to avoid the difficulty and inconvenience of collecting such small sums as would under that rate have to be collected, amounting in many cases to no more than or even less than a penny, the assessors assessed the parish at the rate of a penny in the pound, thereby realizing an amount which, after deducting the quota payable by the parish to the tax, left a large surplus, and it was the intention of the commissioners that such surplus should be collected yearly over four years, and be applied at the end of each year under 24 & 25 Vict. c. 91, so as in four years' time wholly to extinguish the land-tax chargeable on the parish: due notice of a meeting of the commissioners to hear appeals from persons aggrieved by being overrated by the assessors was given. No ratepayer appealed. Upon the plaintiff refusing to pay the penny rate assessed on a leasehold house belonging to and occupied by him, the collector, acting under a warrant of distress signed by the defendant and another commissioner, seized a piece of furniture of the plaintiff on the premises, whereupon the plaintiff brought an action in the County Court against the defendant for illegal distress, in which judgment was given with damages in the plaintiff's favour, and on appeal by the defendant it was held, reversing the County Court decision, that the distress warrant and the proceedings thereunder being perfectly regular, the case came

(*a*) *Patchett* v. *Bancroft*, 7 T. R. 367.

within and was concluded by *Patchett* v. *Bancroft* (*a*), and that the plaintiff could not go behind the warrant, which justified the persons executing it, and that the quota being established, the rate assessed not being appealed against, must be considered as a rate payable under the judgment of the commissioners, and the plaintiff, if objecting to the amount, should have appealed to them under the provisions of 38 Geo. 3, c. 5, by which their decision was made final and conclusive. (*b*)

An assessment is final and conclusive unless appealed against in the manner prescribed by Act of Parliament. Therefore, where a party was assessed to the duty imposed on horse-dealers, it was held that the decision of the assessor that the party was a horse-dealer, however erroneous, could not be questioned in an action. (*c*)

Detentions of levied goods.

"Every distress levied by a collector shall be kept for the space of five days at the cost and charges of the person so refusing to pay. (*d*)

Sale.

"If the said person does not pay the respective sums of money so due within the said five days, then the said distress shall be appraised by two or more of the inhabitants where the said distress is taken, or other sufficient persons, and there be sold by public auction by the said collector or his deputy for payment of the said money." (*e*)

(*a*) *Ubi supra.* (*b*) *Simpkins* v. *Robinson*, 45 L. T. 221.
(*c*) *Allen* v. *Sharp*, 2 Ex. 352. (*d*) 43 & 44 Vict. c. 19, s. 86 (4).
(*e*) S. 86 (5).

Post Officers.

Detention and opening of letters.

By 3 & 4 Vict. c. 96, s. 65, "the Postmaster-General or any of his officers may detain any post letter suspected to contain any contraband goods, and forward the same to the Commissioners of Her Majesty's Customs, who in the presence of the person to whom the same may be addressed, or in his absence in case of non-attendance after notice in writing from the said commissioners requiring his attendance, left at or forwarded by the post according to the address on the letter, may open and examine the same, and in case on any such examination any contraband goods shall be discovered, the said commissioners may detain the letter and its contents for the purpose of prosecution."

And by 10 & 11 Vict. c. 85, s. 10, "the Postmaster-General and any officer of the Post Office may detain any letters which shall be posted or sent by the post contrary to the regulations of this Act, or the said recited Act (*a*), or contrary to any regulations made under the authority of this Act, or the said recited Act, or contrary to the regulations of any Treasury warrant which shall be issued under or by virtue of this Act, or which has been or shall be issued under or by virtue of the said recited Act, and to open such letters." (*b*)

Obstructing business.

Anyone wilfully obstructing the course of business in a post office may be removed by any officer after request and refusal to leave. (*c*)

Duty of postmaster.

In *Smith* v. *Powditch* (*d*) a postmaster was held bound to deliver all letters to the several inhabitants within the post-town or place at their respective places of abode at the rate of postage only established by Act of Parliament.

(*a*) 3 & 4 Vict. c. 96. (*b*) And see 1 Vict. c. 36, s. 25, *post*, p. 139.
(*c*) 47 & 48 Vict. c. 76, s. 9 (2). (*d*) Cowp. 182.

PROCEDURE.

Liability of officers.

Superior officers are not liable for the acts and defaults of their inferiors.

The head of a public office under Government, with power to appoint and remove the servants of the office, who are to be paid by and give at his discretion security to Government, is not responsible to an individual for a loss occasioned by the default of such servants. The servant who is guilty of the default is. The Postmaster-General is not answerable for a packet delivered to the receiver at the post-office and lost at the office, but the receiver is. (*a*)

In *Rowning* v. *Goodchild* (*b*) the Lord Chief Justice De Grey remarked as follows:—"It has been objected that this action does not lie against a deputy postmaster, but should have been brought against the Postmaster-General. But we think that in all cases deputies are answerable for their own personal misfeasances, such as detaining the letters in question, and in the present case the deputies are made by the Act of Parliament, *ex necessitate rei*, substantive officers, and their duty pointed out as such, and it is fitter for the subject to resort to them for their satisfaction for injuries done by themselves than to their principals."

An action on the case was held not to lie against a Postmaster-General for a bank-note stolen by one of the sorters out of a letter delivered into the post-office. (*c*)

(*a*) *Lane* v. *Cotton*, 1 Raym. 646. (*b*) 2 W. Bl. 906.
(*c*) *Whitfield* v. *Lord Despencer*, Cowp. 754.

Personal liability.

If an officer exceeds his authority, he renders himself personally liable. (*a*)

A collector of customs appointed by the commissioners under 3 & 4 Will. 4, c. 51, s. 6, to collect duties on articles coming into the kingdom, and on payment sign bills of entry, which by sect. 18 are a warrant for delivery of such articles to the paying party, is not a mere servant of the commissioners, but a substantive and immediate officer of the Crown; and his functions as collector are ministerial. Therefore he is liable in an action for non-feasance in the exercise of his office, as for refusing to sign such bill of entry without payment of an excessive duty. (*b*)

Where action was held to lie.

Where plaintiff, who was the owner and occupier of the vicarial tithes, and occupier of the rectorial tithes, on which the land-tax had been redeemed, was assessed to land-tax for a gross sum for both, which on demand he refused to pay, whereupon the collector distrained. It was held that trespass lay for the distress, and that the plaintiff was not bound to appeal under 38 Geo. 3, c. 5, s. 8. (*c*)

The jurisdiction of the Common Law Courts was held not to be ousted in actions of a wrongful distress by s. 33 of the Taxes Act, 43 Geo. 3, c. 99. (*d*)

Where goods are shipped from abroad, and the consignee to get the goods delivered to him pays more than the net weight amounts to, he may *semble* recover back the surplus in an action for money had and received against the officer. (*e*)

(*a*) *Terry* v. *Huntington*, Hard. 480.
(*b*) *Barry* v. *Arnaud*, 10 A. & E. 646.
(*c*) *Charleton* v. *Alway*, 11 A. & E. 993.
(*d*) *Shaftesbury* v. *Russell*, 1 B. & C. 666.
(*e*) *Geraldes* v. *Donison*, Holt. 346.

An action on the case for damages was held to lie against a deputy-postmaster for non-delivery of letters gratis in a country post-town. (*a*)

Where action was held not to lie. Breaking and entering.

In an action of trespass for breaking and entering, breaking locks, &c., by defendant's officers of excise acting under a warrant of commissioners to search for run goods under 10 Geo. 1, c. 10, it was held that no trespass lay against the officer either for procuring or executing the warrant. If done maliciously or corruptly, he would be liable to a special action on the case on the ground of such motives. (*b*)

Detention of goods.

Where goods liable to payment of duty have been landed and warehoused and examined by custom-house officers in the regular execution of their duty, no action can be maintained against such officer for the detention of goods under a belief that they are liable to forfeiture, though it ultimately appears they were not so liable. (*c*)

The judgment of the Commissioners of Land Tax on appeal is conclusive in an action of trespass brought against the officer for levying under a warrant of distress. (*d*)

Letters having arrived at a post-office addressed to a party who had become bankrupt, the assignee (in that character) demanded them of the postmaster, and he, believing *bonâ fide* that the assignee was entitled to have them for the purpose of the commission, delivered them up, this having been the practice of the office under similar circumstances for more than thirty years. It was held that the postmaster was not liable under the 9 Anne c. 10, s. 40, for wittingly, willingly, and knowingly de-

(*a*) *Rowning* v. *Goodchild*, 2 W. Bl. 906.

(*b*) *Cooper* v. *Booth*, 3 Esp. 135, overruling *Bostock* v. *Saunders*, 2 W. Bla. 912. (*c*) *Jacobson* v. *Blake*, 7 Scott, N. R. 772.

(*d*) *Patchett* v. *Bancroft*, 1 East, 563, n.

taining letters, and causing them to be detained and opened. (*a*)

Damages

If a postmaster has agreed to deliver letters in a particular mode, and by mistake does not deliver one for two days, that letter containing a returned bill, he is not liable in damages for the amount of the bill if the plaintiff could give notice of dishonour in time if he sent a special messenger, though too late to do so by post. (*b*)

Forfeited goods.

Where a custom-house officer took by force from under the arm of a passenger landing from a vessel a portfolio containing school-drawings, without making any previous demand: *Held*, that as drawings which had not paid duty were liable to forfeiture under 3 & 4 Will. 4, c. 56, the officer was not liable in trespass *de bonis asportatis*. (*c*)

Condemnation of goods in the Exchequer is so conclusive, and so alters their property, that trespass will not lie against the officer who seizes them to try the point of forfeiture again. (*d*)

Over-payment.

An action for money had and received does not lie against a revenue officer to recover an overpayment (*e*), nor to recover duties received by him after the Act imposing them is repealed, if he has paid them over to his superior. (*f*)

Limitation of prosecution Informations.

"Every information exhibited by order of the Commissioners of Excise for the recovery of any penalty imposed, or for the condemnation of any seizure made as forfeited under or by virtue of any Act or Acts relating to any duties under the collection and management of

(*a*) *Meyrelles* v. *Banning*, 2 B. & Ad. 909.

(*b*) *Hordern* v. *Dalton*, 1 C. & P. 181.

(*c*) *De Gondonin* v. *Lewis*, 2 P. & D. 283.

(*d*) *Scott* v. *Shearman*, 2 W. Bl. 977.

(*e*) *Whitbread* v. *Brooksbank*, Cowp. 89.

(*f*) *Greenway* v. *Hurd*, 4 T. R. 553.

the Commissioners of Excise or of the Commissioners of Customs, may be exhibited before the Commissioners of Excise or justice or justices of the peace respectively at any time within six calendar months after the offence or offences alleged in such information have been committed, or the goods, commodities, chattels or things therein alleged to have been forfeited have been seized, and all such proceedings shall be afterwards had thereupon as by law directed, anything in any other Act or Acts of Parliament to the contrary thereof notwithstanding." (*a*)

Excise.

"The proceedings for the recovery of any such [Excise] penalty or penalties, or for the condemnation of any such goods, commodities or chattels shall be commenced respectively within three years next after the commission of the offence or offences by which such penalty or penalties shall have been incurred, or after the seizure of such goods, commodities or chattels shall have been made." (*b*)

Customs.

A similar enactment as to customs penalties is contained in 39 & 40 Vict. c. 36, s. 257.

In *Reg.* v. *Thompson* (*c*) it is laid down that 3 & 4 Will. 4, c. 53, which enacted by sect. 120 that all suits should be commenced within three years after the offence committed does not apply to an indictment found by the grand jury of a county at the assizes. Nor, *per* Coleridge, J., to an indictment wherever preferred for a conspiracy to remove goods fraudulently from a bonding warehouse.

Protection.

The protection afforded by the law to revenue officers for acts done in executing their duty is either (*A*) absolute or (*B*) qualified.

Absolute.

In case any information shall be commenced and

(*a*) 11 & 12 Vict. c. 113, s. 3. (*b*) 7 & 8 Geo. 4, c. 53, s. 57.
(*c*) 16 Q. B. 832.

brought to trial or hearing for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this Act or any other Act or Acts of Parliament relating to the revenue or excise wherein a verdict or decision shall be given or made for the claimant or claimants thereof, and it shall appear to the judge or a Court before whom the same shall be tried or heard that there was a probable cause of seizure, such judge or Court shall certify upon the record or other written proceedings on such information that there was a probable cause for making such seizure, and in such case the officer of excise or person who made or assisted in such seizure shall not be liable to any action, indictment or other suit or prosecution on account of such seizure or of the detention of any such goods, commodities or chattels. (*a*)

Where probable cause for seizure.

A similar enactment in regard to customs officers is contained in 8 & 9 Vict. c. 87, s. 116.

Stopping carts and wagons.

Where carts or wagons are stopped and examined for smuggled goods.

"If none shall be found, the officer or other person shall not on account of such stoppage and examination be liable to any prosecution or action at law on account thereof." (*b*)

Ships liable to seizure or examination.

Where ships liable to seizure or examination are chased by any of H.M.'s ships and on refusing to bring to are fired into. "Such captain, master, or other person acting in his aid or by his direction, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing." (*c*)

Qualified protection

"Every action against any officer of customs or other

(*a*) 7 & 8 Geo. 4, c. 53, s. 119.
(*b*) 39 & 40 Vict. c. 36, s 203.
(*c*) S 181, *ante*, p. 95.

such person shall be commenced within one month (*a*) after the cause of action shall have arisen; but if such action be brought in respect of any seizure made by such officer or other such person, the month shall be computed from the day of the seizure unless it shall within that time become the subject of an information for the condemnation thereof, in which case the cause of action shall not be deemed to have arisen until the day after the trial of such information." (*b*) *Limitation.* Customs.

"A sea-fishery officer shall be entitled to the same protection in respect of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under this Act as is given to any officer of customs by the Customs Consolidation Act, 1876, or any Act amending the same, and (with reference to the seizure or detention of any ship) by any Act relating to the registry of British ships." (*c*) Sea-fishery officer.

"If any action or suit shall be brought, raised, or commenced against any officer of excise or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, for anything done in pursuance of this Act or any other Act or Acts of Parliament relating to the revenue of excise, such action or suit shall be commenced within the space of three calendar months next after the course of action shall have arisen." (*d*) Excise.

"If an action or suit be brought against a surveyor, collector, assessor, or other person for anything done in pursuance of this Act, the Tax Acts, or the Land Tax Acts, such action or suit shall be commenced within six Taxes.

(*a*) Extended to two months by 40 & 41 Vict. c. 13, s. 5.
(*b*) S. 272. (*c*) 46 & 47 Vict. c. 22, s. 14 (1).
(*d*) 7 & 8 Geo. 4, c. 53, s. 115.

months next after the fact committed and not afterwards." (*a*)

Notice of action. Excise.

"No writ, summons, or process shall be sued out against or served upon, nor shall any action be brought, raised, or prosecuted against any officers of excise or any person employed in the revenue of excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for anything done in pursuance of this Act or any other Act or Acts of Parliament relating to the revenue of excise until after the expiration of one calendar month next after notice in writing shall have been delivered to such officer or person as aforesaid and left at the usual place of his abode by the attorney or agent for the person or persons who shall intend to sue out such writ or process, or to bring, raise, or prosecute such action as aforesaid, in which notice shall be clearly and explicitly contained and set forth the cause of such action, the time when and the place where such cause of action arose, the name and place of abode of the person or persons in whose name or names such action or suit is intended to be brought, and the name and place of abode of the said attorney or agent." (*b*)

Proof of notice at trial.

"No plaintiff shall recover any verdict against any such officer or person as aforesaid unless it shall be proved at the trial of such action or suit that such notice was given." (*c*)

In an action of assumpsit for money had and received brought against an excise officer for duties received by him after the Act of Parliament which imposed them was repealed, the defendant was held entitled to notice. (*d*)

(*a*) 43 & 44 Vict. c. 19, s. 20 (1) (a).
(*b*) 7 & 8 Geo. 4, c. 53, s. 114. (*c*) S. 118.
(*d*) *Greenway* v. *Hurd*, *ubi sup.*

A similar enactment as to customs is contained in 39 & 40 Vict. c. 36, s. 268, with the following additional clause: Customs

"If any action or suit shall be commenced against any such officer or other person and no such notice shall have been given, such officer or other person may call upon the plaintiff to establish to the satisfaction of the Court on affidavits on both sides that such action or suit is brought for some act, matter, or thing not done in the execution of or by reason of his office, or whilst on duty as such officer, and if the plaintiff shall fail so to satisfy the Court, such action or suit shall discontinue."

By 43 & 44 Vict. c. 19, s. 20: Taxes

"(2.) No writ or process shall be sued out for the commencement of such action or suit until the expiry of one month next after notice in writing shall have been delivered to or left at the usual place of abode of the intended defendant by the attorney or agent of the intended plaintiff."

"(3.) Every such notice must clearly specify and completely contain.

(*a*) The cause of action.

(*b*) The name and place of abode of the intended plaintiff, and

(*c*) The name and place of abode of his attorney or agent, if any.

"Any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, to whom such notice shall be given as aforesaid, at any time within one calendar month next after such notice shall have been given, may tender amends to the person or persons in whose name or names such action or suit shall *Tender of amends* Excise.

be brought, raised, or commenced, or to the agent or attorney of such person or persons." (*a*)

Customs Taxes. Provision to the same effect as regards customs is contained in 39 & 40 Vict. c. 36, s. 270, and as regards taxes in 43 & 44 Vict. c. 19, s 20 (5).

Venue. Customs. The venue in all such actions shall be laid in the county or place where the cause thereof is alleged to have occurred. (*b*)

Payment into Court. Excise. "In case any officer of excise or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, shall neglect to tender amends, or shall have tendered insufficient amends before action or suit brought, raised or commenced, it shall be lawful for the defendant or defendants by leave of the Court in which such action or suit shall be brought, raised or commenced at any time before issue joined to pay into Court such sum of money as such defendant or defendants shall think fit, whereupon such proceedings, orders and judgment shall be had, made and given in and by such Court as in other actions where the defendant is allowed to pay money into Court." (*c*)

Customs. A similar provision as to Customs is contained in 39 & 40 Vict. c. 36, s. 271. (*d*)

Pleading. The general issue. Both excise and customs officers may in actions against them plead the general issue. (*e*)

By 7 & 8 Geo. 4, c. 53, s. 40, if any officers be assaulted or resisted in the execution of their duty, they may oppose force to force "and if any person so assaulting or resisting

(*a*) 7 & 8 Geo. 4, c 53, s. 116.

(*b*) 39 & 40 Vict. c. 36, s. 272. As to excise, see 7 & 8 Geo 4, c. 53, s. 115. As to Taxes, see 43 & 44 Vict. c. 19, s. 20 (1) (b).

(*c*) 7 & 8 Geo. 4, c. 53, s. 117.

(*d*) As to the effect of payment into Court, see Ord. XXII.

(*e*) 7 & 8 Geo 4, c 53, s. 115; 39 & 40 Vict. c. 36, s. 272.

such officer as aforesaid or any person so employed or any person acting in such aid and assistance as aforesaid, shall in doing so be wounded, maimed or killed, and the said officer or person so employed or person acting in such aid and assistance as aforesaid shall be sued or prosecuted for any such wounding, maiming or killing, it shall be lawful for every such officer or person so employed or person acting in such aid and assistance to plead the general issue."

Tender of amends to be pleaded. Customs.

"In case such amends be not accepted to plead such tender in bar of the action together with the plea of 'not guilty,' and other pleas with leave of the Court where such leave must be obtained pursuant to the Common Law Procedure Act, 1852" (*a*).

Excise. Taxes.

A similar provision as to the Excise will be found in 7 & 8 Geo. 4, c. 53, s. 116, and as to Taxes in 42 & 43 Vict. c. 19, s. 20, sub.-ss. (5) (6)

In *Charleton* v. *Alway* (*b*), where the collector had illegally distrained for land-tax which was not due, the plaintiff having demanded and received a copy of the warrant, it was held that he was not bound to join as defendants the commissioners who issued the warrant, 24 Geo. 2, c. 44, s. 6, being inapplicable, though the commissioners were also acting magistrates for the division.

Evidence. The Act and the special matter.

Excise officers may in case of action being brought against them for anything done in the execution of their duty "give this Act and the special matter in evidence thereunder at any trial to be had thereupon." (*c*)

Similar provisions as to customs officers are contained in 39 & 40 Vict c. 36, s. 272 and as to Taxes in 43 & 44 Vict. c. 19, s. 20 (6).

(*a*) 39 & 40 Vict. c. 36, s. 270. (*b*) 11 A. & E. 993.
(*c*) 7 & 8 Geo. 4, c. 53, s. 115.

This privilege is also accorded to customs and excise officers in case of actions against them arising out of assaults or resistance to them while executing their duty. (*a*)

Upon not guilty in trespass excise officers executing a body warrant issued by the commissioners may give the special matter in evidence. (*b*)

On appeal. By 7 & 8 Geo. 4, c. 53, s. 82, the officer of excise, proceeding by information for an offence against that Act, as well as any party aggrieved by the decision of justices adjudging on such an information, may appeal to the quarter sessions on giving the notice of appeal pointed out by the Act. By sect. 84, the quarter sessions are to rehear upon oath and to re-examine the same witnesses, and to reconsider the same evidence, and the merits of the case wherever the original judgment appealed against shall have been given, and "shall not examine any evidence or any witness or witnesses other than or different from the witness or witnesses which and who shall have been before examined before the Commissioners of Excise or justice of the peace respectively at the trial and hearing of the information upon which the original judgment shall have been given." An information on this Act contained four counts. The justices convicted on the fourth and acquitted on the others. Defendant gave notice of appeal from the judgment to quarter sessions, but the officer prosecuting on the part of the Crown gave no notice of appeal against the judgment of acquittal on the first three counts: *Held*, that the defendant's notice of appeal was limited to the judgment of the convicting justices on the fourth count, and that if on the hearing the Court of Appeal was of opinion that the count was not

(*a*) 7 & 8 Geo 4, c. 53, s. 40.
(*b*) *Wood* v *Chessal*, 2 W. Bl. 1254.

sustained by the evidence adduced, but that the second count was, the judgment must be altogether for the defendant. (*a*)

Where an officer of excise, by whom an information for penalties is exhibited, is absent at the time of the hearing, and there is an appeal against the judgment on the part of the Crown to the quarter sessions under 7 & 8 Geo. 4, c. 53, s. 82, the notice of appeal required by sect. 83 may, by virtue of 4 & 5 Will. 4, c. 51, ss. 22, 23, be given and signed by an officer of excise who is present to conduct the proceedings. (*b*)

Affidavit of defendant.

In order to shew in trespass that the defendant, an excise officer, entered the plaintiff's house, the defendant's affidavit was put in, by which he stated that he had entered the house by virtue of a magistrate's warrant to search for malt that had not paid duty: *Held*, that the putting in of this affidavit by the plaintiff did not make out a defence for defendants, as the affidavit did not state that the warrant was granted upon oath made by an officer of excise as required by 7 & 8 Geo. 4, c. 53, s. 24. (*c*)

Where no evidence against a defendant.

In an action of trespass against two excise officers for entering the plaintiff's house, there was at the close of the plaintiff's case no evidence against one of the defendants: it was held, that if no further evidence was given for the plaintiff the plaintiff's counsel must then elect to go on as to the other defendant only, and cannot wait till the defence was concluded. (*d*)

On indictment.

Where any person is prosecuted for signalling smugglers "it shall not be necessary to prove on any indictment or

(*a*) *R.* v. *Gamble* 16 M. & W. 384.
(*b*) *R.* v. *Woodrow*, 15 M. & W. 404.
(*c*) *R* v. *Moseley*, 1 C & K. 718. (*d*) *Ib*

information in such case that any ship or boat was actually on the coast." (*a*)

Where a count in an indictment stated that the defendant made an assault upon a person who was unlawfully in possession of goods under a levy for a specified sum of money for arrears of assessed taxes with intent unlawfully to force him out of possession, Lord Denman, C.J., held that it was necessary to prove that the specific sum was due, although he thought that no sum need have been stated. (*b*)

Where A., a collector, unwarrantably did, without any objection being made, introduce B., a constable, into the house of D., a person from whom he demanded taxes, and afterwards, on reasonable ground of apprehending violence arising, the collector introduced C., another constable, upon whom D. committed an assault; it was held no answer to an indictment against D. for the assault on C. in the execution of his duty that the collector had wrongfully introduced B. (*c*)

A prisoner in custody of an officer of customs on a charge of smuggling, and brought up by *habeas corpus* at common law, may controvert the truth of the return to the writ on affidavit by virtue of 56 Geo. 3, c. 100, s. 4. (*d*)

Justification.

Where plaintiff, being owner and occupier of the vicarial tithes and occupier of the rectorial tithes, on which latter tithe the land-tax had been redeemed, was assessed to land-tax for a gross sum for which, on refusal, the collector distrained, it was held that the demand having been made for a sum alleged to be due for a quarter then expired,

(*a*) 39 & 40 Vict. c. 36, s. 190.
(*b*) *R.* v. *Ford*, 4 N. & M. 451.
(*c*) *R.* v. *Clarke* 4 N. & M. 671.
(*d*) *Ex parte Beeching*, 6 D. & R. 209.

defendant could not justify the distress by shewing that a sum was due at the expiration of the current quarter for vicarial tithes which would cover the sum distrained for. (*a*)

Notice, evidence limited to Customs.

"Upon the trial of any action brought in pursuance of such notice the plaintiff shall not be entitled to a verdict without proving on the trial that such notice had been duly served, in default whereof the defendant shall receive a verdict and costs, nor shall the plaintiff be at liberty to produce evidence of any cause of action, except such as has been distinctly stated in such notice."(*b*)

Excise. Taxes.

Similar provisions are contained as to Excise in 7 & 8 Geo. 4, c. 53, s. 118, and as to Taxes in 43 & 44 Vict. c. 19, s. 20 (4), except that no proof of service of the notice is there required.

Affidavit in lieu of notice, evidence limited to.

Where the plaintiff satisfies the Court on affidavit under 39 & 40 Vict. c. 36, s. 268 (*c*), that he has a good cause of action for an act done not in the execution of the officer's duty "he shall not be allowed on the trial of such action to give evidence of any cause of action other than such as shall have been disclosed in his said affidavit."

Witnesses.

On the trial of an information filed by the Attorney-General for the recovery of penalties for smuggling under the 46th and 82nd sects. of 8 & 9 Vict. c. 87, defendant was tendered as a witness on his own behalf and rejected. Pollock, C.B., and Parke, B., held that the defendant was not a competent witness by 14 & 15 Vict. c. 99, and therefore that he was properly rejected. Platt and Martin, BB., *contrà*. (*d*)

On an information against the defendant for obstructing

(*a*) *Charleton* v. *Alway*, 11 A. & E. 993.
(*b*) 39 & 40 Vict. c. 36, s. 269. (*c*) *Ante*, p. 127.
(*d*) *Attorney-General* v. *Radloff*, 10 Ex. 84.

a custom-house officer in the execution of his duty, Lord Kenyon remarked—The defendant's counsel have no right nor shall they be permitted to inquire the name of the person who gave the information of the smuggling of goods.(*a*)

"It has been resolved by a majority of the judges that the officer is not obliged to declare the grounds of his suspicion lest accidents should happen to him." (*b*)

In an information by the Attorney-General for a breach of the revenue laws, a witness for the Crown cannot be asked in cross-examination—Did you give the information? for the rule of public policy which protects a witness from being asked such questions as would disclose the informer if he be a third person, equally applies to questions which would disclose whether a witness is himself the informer. (*c*)

In *Van Boven's Case* (*d*), under 8 & 9 Vict. c. 87, ss. 2, 4, 50, it was held by Coleridge, J., and Erle, J. (Denman, C.J., *dub.*), that in conviction under sect. 50 for being found in a vessel liable to forfeiture under sect. 2 as having on board prohibited goods, it was unnecessary to negative the exemptions in sect. 4.

Per Denman, C.J.: Where a statute imposes penalties for an act indifferent in its own nature, and which by the statute itself is not an offence if done under the circumstances there specified, the informer must shew it to be criminal and that that purpose negatives the circumstances under which (whether they be embodied in the penal clause or not) criminality does not attach.

Verdict. In certain cases juries are directed in actions between revenue officers and the public to find certain verdicts.

(*a*) *R.* v. *Akers*, 6 Esp. 125, n.
(*b*) *Per Buller, J., in Cooper* v. *Booth*, 3 Esp. 135.
(*c*) *Attorney-General* v. *Briant*, 15 M. & W. 169.
(*d*) 9 Q. B. 669.

In an action against an excise officer where notice of the action is not proved on the trial "the defendant or defendants in such action or suit shall in default of such proof recover a verdict." (*a*) Default of proof of notice of action.

Where amends have been tendered, "if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant or defendants." (*b*) Excise. Verdict for defendant.

If however they "find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants on such other plea or pleas as aforesaid, such jury shall give a verdict for such plaintiff or plaintiffs" (*c*) Verdict for plaintiff

Similar provisions as regards plaintiffs and defendants in actions between customs officers and the public will be found in 39 & 40 Vict. c. 36, s. 270. Customs

In both the above cases where verdicts are found for the plaintiffs such damages may be awarded as the jury "shall think proper." (*d*) *Damages.*

But "in case any action, indictment or other suit or prosecution shall be brought to trial or hearing against any officer of excise or person on account of the seizing of any such (*e*) goods, commodities or chattels, or of the detention thereof (whether any information shall have been or shall be brought to trial or hearing for the condemnation of the same or not), and a verdict or sentence shall be given thereupon against the defendant or defendants therein, if the Court or judge before whom such action, indictment or other suit or prosecution shall be tried or heard shall certify in like manner as aforesaid (*f*)

(*a*) 7 & 8 Geo. 4, c. 53, s. 118. (*b*) *Ib* s 116.
(*c*) *Ib.* (*d*) *Ib.* and 39 & 40 Vict. c 36, s 270.
(*e*) *I e*, Goods seized as forfeited (*f*) *Vide* this section, *ante*, p. 124.

that there was probable cause for such seizure, then and in such case the plaintiff or plaintiffs therein, besides the goods, commodities and chattels respectively so seized or the value thereof, shall not be entitled to more than twopence damages." (*a*)

In an action against a collector of customs for refusing to sign a bill of entry without payment of an excessive duty, the measure of damages was held to be the amount so paid, together with the loss sustained by the detention of the corn, taking into account a fall of prices which had occurred between the refusal to sign and delivering up the corn. (*b*)

Costs. Excise.

By 7 & 8 Geo. 4, c. 53, s. 115, treble costs were awarded to a successful defendant. But these costs are now abolished. (*c*)

Where there has been tender of amends which have not been accepted and "the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant or defendants, and in such case, or in case the plaintiff or plaintiffs shall be nonsuited or shall discontinue such action or suit, or in case judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case the same costs shall be awarded to such defendant or defendants as if the general issue only had been pleaded, and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants on such other plea or pleas as aforesaid, such jury shall give a verdict for such plaintiff or plaintiffs, with such damages as they shall think proper together with costs of suit." (*d*)

(*a*) 7 & 8 Geo. 4, c. 53, s. 119.
(*b*) *Barry* v. *Arnaud*, 10 A. & E. 646.
(*c*) 5 & 6 Vict. c. 97, s. 2. (*d*) 7 & 8 Geo. 4, c. 53, s. 116.

Where no proof of notice of trial is given at the hearing, the defendant will be entitled to costs. (*a*) Where the judge certifies that there was probable cause for seizure, no cost will be allowed against the defendant. (*b*)

Customs.

Where there has been tender of amends which have not been accepted and "the jury shall find the amends so tendered sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall be non-suited or discontinue his action, or in case judgment be given for such defendant on demurrer, then such defendant shall be entitled to like costs as he would have been entitled to if he had pleaded the general issue only; but if upon issue joined the jury shall find that no amends were tendered, or that the same were insufficient, or shall find against the defendant on such plea or pleas, they shall give a verdict for plaintiff and such damages as they shall think proper, together with costs of suit." (*c*)

And in any case "if the plaintiff shall be non-suited, or discontinue, or if upon a verdict or demurrer judgment shall be given against him, the defendant shall be entitled to costs and have such remedy for the recovery thereof as any other defendant now has in other cases where costs are legally recoverable." (*d*)

(*a*) *Ib* s 118. (*b*) S. 119.
(*c*) 39 & 40 Vict. c. 36, s. 270. (*d*) S. 272.

PART IV.

OFFICERS OF THE PEACE.

The Queen's Messengers.

Queen's Messengers.

The Queen's messengers are the officers usually employed by the Secretary of State to put into execution his orders.

Warrant.

The mode in which he usually issues his orders is by warrant under his hand. "He may lawfully commit persons for treason or other offences affecting the government." (*a*)

Cause to be stated.

The cause of the commitment must be expressed in the warrant. (*b*)

In 1592 the judges remonstrated against the exercise of this power by the Secretary of State except in case of high treason. (*c*)

General warrants.

Later, a custom grew up for the Secretary of State to issue general warrants in which the person to be arrested or the person whose goods were to be seized was not named. These after much discussion (*d*) were finally declared to be illegal by resolution of the House of Commons. (*e*) The House at the same time resolved that the seizure and taking away the papers of the

Seizure of papers of author (named).

(*a*) Hawk. P. C., cap. 16, s. 4.
(*b*) *Hillyard's case*, 2 Leon. 175. *Melvin's Case*, Palm. 558.
(*c*) 1 And. 297.
(*d*) *Leach* v. *Money*, 19 St. Tr. 1001. *Wilkes* v. *Wood*, *Ib.* 1153.
(*e*) 30 Comm. Jour. 753.

author, printer or publisher, or supposed author, printer or publisher of a libel is illegal.

Opening letters.

The power to open letters is contained in the 9th Anne, c. 10, and, as will be seen, must in each case be exercised under warrant. By s. 40 of that Act "no person or persons shall presume wittingly, willingly or knowingly to open, detain or delay, or cause, procure, permit or suffer to be opened, detained or delayed any letter or letters, packet or packets after the same is or shall be delivered into the general or other post office or into the hands of any person or persons employed for the receiving or carrying post letters, and before delivery to the persons to whom they are directed or for their use; except by an express warrant in writing under the hand of one of the principal Secretaries of State for every such opening, detaining or delaying." A proviso to the same effect is contained in 7 Will. 4 & 1 Vict. c. 36, s. 25, with the following additional exceptions, namely, "post-letters returned for want of a true direction, or by reason that the person to whom the same shall be directed is dead or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof."

Police Officers.

Duties. The duty of police officers is to preserve the peace. And where any serious offence against the law is committed, to seize and detain the offender.

Arrest.

Arrest. The power of a constable to arrest is in all cases exercised either under warrant or without warrant.

Arrest under warrant. In all cases of misdemeanor other than those specially provided for by statute and detailed below, the warrant of a justice is a necessary preliminary to an arrest. Acting under such authority, the officer's liability varies with the person who issued the warrant; as to which see *post*, "Warrants." (*a*)

Arrest without warrant. In all cases of treason, felony and breach of the peace committed in his view (*b*), and in those of misdemeanor, specially provided for by statute and detailed below, the officer has power to arrest without warrant. A list of felonies will be found at the end of the chapter.

Breaking doors. In cases of treason, felony or other indictable offence, the officer may break doors in order to effect the arrest (*c*) if, after demand, admittance cannot otherwise be obtained. (*d*)

Arrest on Sunday. By 29 Car. 2, c. 7, s. 6, arrests may be effected on Sunday.

Stating cause of arrest. Where the circumstances are such that a man must know why a person is about to apprehend him he need

(*a*) P. 309. (*b*) Black. IV., p. 292.
(*c*) *Semayne's Case*, *ante*, p. 32.
(*d*) *Rawlins* v. *Ellis*, 16 M. & W. 172.

not be told, and the arrest will be legal and the resistance illegal just as if he had been told. (*a*)

An officer has authority to arrest without warrant in the following cases:

Affray.

Where there is an affray, *i.e.*, the fighting of two or more persons in some public place to the terror of Her Majesty's subjects, he may arrest and either carry them before a justice or detain them till their heat be over. (*b*) But it is essential that the party should have been engaged in the affray, and that the constable should have had view of the affray while the party was so engaged in it, and that the affray was still continuing at the time of apprehension. (*c*)

If a constable is preventing a breach of the peace, and any person stands in his way with intent to hinder him from doing so, the constable is justified in taking such person into custody, but not in giving him a blow. (*d*)

Assault on County Court officers and others.

Where County Court officers are assaulted in the execution of their duty, peace officers may arrest the offenders. (*e*)

In order to justify an arrest for an assault and battery in the constable's view, it must be such as would justify a criminal charge. (*f*)

Where a man in the presence of a constable raised a shovel as if to strike his wife, swearing that he would have murdered her were it not for the presence of the constable, and afterwards for about twenty minutes

(*a*) *R.* v. *Howarth*, 1 Moo. C. C. 207.

(*b*) Hawk. P. C., I. c. 63, s. 13.

(*c*) *Cook* v. *Nethercote*, 6 C & P. 741.

(*d*) *Levy* v. *Edwards*, 1 C. & P. 40.

(*e*) 9 & 10 Vict. c. 95, s. 114, *ante*, p. 72; as to police see 34 & 35 Vict. c. 112, s. 12, and 48 & 49 Vict. c. 75, s. 2.

(*f*) *Coward* v. *Baddeley*, 4 H. & N. 481.

continued to use violent language towards his wife and then left his house, professing an intention of going to his father's to sleep, and after he had gone a few yards the constable arrested him, he was held justified in doing so. (*a*)

The prisoner assaulted a police constable in the execution of his duty. The constable went for assistance, and after the interval of an hour returned with three constables, when he found that the prisoner had retired into his house, the door of which was closed and fastened. After another interval of fifteen minutes the constables forced the door, entered and arrested prisoner, who wounded one of them resisting his apprehension: *Held*, that as there was no danger of any renewal of the original assault, and as the facts of the case did not constitute a sufficient pursuit, the arrest was illegal. (*b*)

A police constable having imprisoned a plaintiff in a cell on a charge of aiding another in assaulting him in the execution of his duty, some hours afterwards the defendant, the chief constable, arrived at the station, and on the report of another constable, without enquiring into the facts, handcuffed plaintiff, and took him before a magistrate who dismissed the charge: *Held*, in order to justify defendant he was bound to shew that the charge was well founded, and failing that, he and all those concerned in the imprisonment were liable in trespass. (*c*)

Brawling. Any person making any disturbance in any church, chapel or churchyard may be immediately apprehended by any constable and taken before a justice. (*d*)

"Any person who shall be found hawking or carrying

(*a*) *R.* v. *Light*, 27 Law Jour. (M.C.) 1.
(*b*) *R.* v. *Marsden*, L.R. 1 C. C. R. 131.
(*c*) *Griffin* v. *Coleman*, 4 H. & N. 265.
(*d*) 23 & 24 Vict. c. 32, s. 3, and 43 & 44 Vict. c. 41, s. 8.

about for sale any cards, whether enclosed in a stamped wrapper or not, and who shall sell the same or offer the same for sale at any place for which he shall have no licence, may be apprehended by any constable or officer of Inland Revenue and taken before any justice of the peace." (*a*) Cards Hawking.

A person about to expose an infant whereby its life may be endangered is liable to arrest. (*b*) Child exposure.

"It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence, or any high crime and offence or crime and offence against this Act." (*c*) Coin offences.

The following are misdemeanors under this Act (*d*):

Counterfeiting foreign coin other than gold or silver. (*e*)

Exporting counterfeit coin. (*f*)

Possessing three or more pieces of counterfeit coin with intent, &c. (*g*), or more than five pieces of foreign counterfeit coin with intent, &c. (*h*)

Uttering counterfeit gold or silver (*i*), or uttering accompanied by possession of other counterfeit coin or followed by a second uttering (*j*), or uttering foreign medals, &c., with intent (*k*), or foreign counterfeit gold or silver (*l*), or base copper coin. (*m*)

Defacing coin by stamping words thereon. (*n*)

Tendering such defaced coin. (*o*)

(*a*) 25 & 26 Vict c. 22, s. 31.
(*b*) Arch, J.P. 122. (*c*) 24 & 25 Vict. c. 99, s. 31.
(*d*) See *ante*, p. 140, as to arrest for felonies.
(*e*) *Ib.* s 22. (*f*) S. 8. (*g*) S. 11.
(*h*) S. 23. (*i*) S. 9. (*j*) S. 10.
(*k*) S. 13. (*l*) S. 20. (*m*) S. 15.
(*n*) S 16 (*o*) S 17.

Contagious Diseases. Animals.

"(2.) Whenever a person is seen or found committing (*a*) or is reasonably suspected of being engaged in committing an offence against this Act, a constable may without warrant stop and detain him, and if his name and address are not known to the constable and he fails to give them to the satisfaction of the constable, the constable may without warrant apprehend him.

"(3.) If any person obstructs or impedes a constable or other officer in the execution of this Act or of an Order of Council, or of a regulation of a local authority, or assists in any such obstructing or impeding, the constable or officer may without warrant apprehend the offender."

(4.) A person is to be taken with all practicable speed before a justice and shall not be detained without a warrant longer than is necessary for that purpose, and the law as to recognizances is to apply. (*b*)

The offences against this Act are:

S. 61 (1). Contravention of Act, Order of Council, or regulation of local authority.

(2.) Failing to keep diseased animal separate or to give notice to the police.

(3.) Failing to give, produce, observe, or do any notice, licence, rule, or thing required by the Act, or order, or regulation as above.

(4.) Doing anything unlawful under the Act.

(5.) Omitting where the omission is made unlawful.

(6.) Refusing admission to officer when entitled to enter, or obstructing, or impeding.

(7.) Throwing carcase of any diseased animal into river or sea within three miles of shore.

(*a*) See *Downing* v. *Capel*, *post*, p. 149.

(*b*) 41 & 42 Vict. c. 74, s. 50.

S. 62 (1)–(9). Using expired or blank licence or falsifying.

(10.) Fraudulently attempting to obtain compensation from Privy Council or local authority for slaughtered animal, or aiding or abetting.

(11.) Digging up carcase buried by order.

(12.) Using prohibited vehicles.

Convicted persons.

"Any constable or police officer may without warrant take into custody any holder of such a licence (see s. 4) whom he may reasonably suspect of having committed any offence or having broken any of the conditions of his licence (*a*), and may detain him in custody until he can be taken before a justice of the peace or other competent magistrate and dealt with according to law." (*b*)

"Any person charged with being guilty of any offence against this Act mentioned in this section (*i.e.* persons twice convicted) may be taken into custody as follows, (that is to say,)

"In the case of any such offence against this Act as is first in this section mentioned (*i.e.* getting living dishonestly) by any constable without warrant, if such constable is authorized to do so by the chief officer of police of his district.

"In the case of any such offence against this Act as is thirdly in this section mentioned (*i.e.* found under suspicious circumstances) by any constable without warrant, although such constable is not specially authorized to take him into custody.

"Also where any person is charged with being guilty of an offence against this Act fourthly in this section men-

(*a*) Forfeiture of licence is occasioned by conviction or failure of the party to report himself to the police, *vide* s. 4.

(*b*) 27 & 28 Vict. c. 47, s. 6.

tioned (*i.e.* found on premises without being able to give satisfactory account of himself) he may without warrant be apprehended by any constable." (*a*)

Cruelty to animals.

"When and so often as any of the offences against the provisions of this Act shall happen, it shall and may be lawful for any constable upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable, to seize and secure by the authority of this Act any such offender, and forthwith, without any other authority or warrant, to convey such offender before a justice of the peace, to be dealt with by such justice for such offence according to law." (*b*)

By s. 2 the offences are stated to be "cruelly beat, ill-treat, over-drive, abuse or torture," or cause any of these to be done to any animal.

Animal includes cocks (*c*) and linnets. (*d*)

Other offences are—

Places kept for bull-baiting, &c., or aiding or assisting thereat. (*e*)

The offence of aiding can only be committed in the places mentioned in the first part of the section. (*f*)

Persons impounding animals to provide food and water. (*g*)

Persons keeping slaughter places to affix names. (*h*)

Neck hair to be cut before slaughtering and to be killed within three days, and provided meanwhile with food and water. (*i*)

(*a*) 34 & 35 Vict. c. 112, s. 7. (*b*) 12 & 13 Vict. c. 92, s. 13.
(*c*) *Bridge* v. *Parsons*, 2 B. & S. 382.
(*d*) *Colam* v. *Paget*, 12 Q. B. D. 66. (*e*) *Ib.* s. 3.
(*f*) *Clark* v. *Hayne*, 29 L. J. M. C. 105. (*g*) S. 5.
(*h*) S. 7. (*i*) S. 8.

Description of cattle slaughtered to be entered in book. (*a*)

Improperly conveying animals. (*b*)

Persons having management of any *place* for slaughtering, not to employ cattle intended for slaughter. (*c*)

These words are not confined to persons having licensed slaughter-houses, but apply to the case of a huntsman having the management of a place used as a slaughter-house to provide food for hounds, who lent a horse to be worked instead of slaughtering it. (*d*)

Offences not in the officer's view. (*e*)

If a peace officer be required by another person to take a third person into custody for cruelty to a horse not in the officer's view, the officer before taking the party into custody should either inquire into all the particulars or should see the animal, so as to form a judgment of what has occurred. (*f*)

Obstructing constables or pound keepers. (*g*)

Damage to property.

"Any constable or peace officer may take into custody without warrant any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act, and shall take such person as soon as reasonably may be before a justice of the peace to be dealt with according to law." (*h*)

"Any person found committing any offence against this Act, whether the same be punishable by indictment or upon summary conviction, may be immediately appre-

(*a*) *Ib.* s. 10. (*b*) S. 11. (*c*) S. 9.
(*d*) *Colam* v. *Hall*, L. R. 6 Q. B. 206. (*e*) S. 13.
(*f*) *Hopkins* v. *Crowe*, 7 C. & P. 373. (*g*) S. 20.
(*h*) 24 & 25 Vict. c. 97, s. 57.

hended without a warrant by any peace officer . . . and forthwith taken before some neighbouring justice of the peace to be dealt with according to law." (*a*)

The following are misdemeanors under this Act:— (*b*)

Killing or maiming animals. (*c*)

Rioters injuring buildings. (*d*)

Destroying dams. (*e*)

Destroying fences (second offence). (*f*)

Poisoning fish. (*g*)

Destroying fruit in gardens (*h*), or not in gardens. (*i*)

Making gunpowder with intent. (*k*)

Injuring telegraphs (*l*), or attempts to do so. (*m*)

Injury by tenants. (*n*)

Obstructing trains. (*o*)

Damaging trees (third offence). (*p*)

Destroying vegetables in gardens (*q*), or not. (*r*)

Destroying works of art. (*s*)

Any damage over five pounds. (*t*)

Aiding and abetting any of these. (*u*)

Dice. Persons playing with false dice. (*x*)

Escape. Offenders who have escaped cannot be retaken without warrant, unless the original offence was one for which no warrant is required. (*y*)

Explosives. The power to arrest offenders is contained in 38 & 39 Vict. c. 17, s. 78. (*z*)

Any person whatever may "apprehend on the spot any

(*a*) *Ib.* s. 61. (*b*) *See ante*, p. 140. (*c*) S. 41.
(*d*) S. 12. (*e*) S. 32. (*f*) S. 25.
(*g*) S. 32. (*h*) S. 23. (*i*) S. 24.
(*k*) S. 54. (*l*) S. 37. (*m*) S. 38.
(*n*) S. 13. (*o*) S. 36. (*p*) S. 22.
(*q*) S. 23. (*r*) S. 24. (*s*) S. 39.
(*t*) S. 51. (*u*) S. 63. (*x*) Arch., J. P., 123.
(*y*) 2 Hawk. c. 14, s. 9. (*z*) *Post*, p. 235.

person or persons so offending (*i.e.* agreeing to pay money or deliver goods on the event of a game or lottery), and convey or cause to be conveyed before any magistrate or justice of the peace residing near the place where such offence shall be committed, the person or persons so apprehended, to be proceeded against under this Act." (*a*) Gaming.

For offences against the Highways Act *see* Surveyors of Highways. (*b*) Highways.

Where a hue and cry on felony alleged to have been committed is raised, a constable who concurs in the pursuit is justified in arresting although it turn out ultimately that the person was innocent, or no felony had been in fact committed. (*c*) Hue and cry.

"Any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person and forthwith taken, together with such property, if any, before some neighbouring justice of the peace to be dealt with according to law. (*d*) Larceny.

Found committing. An interval of two hours excludes the statute. (*e*)

Immediately. Whether the apprehension was immediately ought to be left as a question of fact to the jury if it be disputed whether notice of action ought to have been given under s. 113. (*f*)

(*a*) 42 Geo. 3, c. 191, s. 6.
(*b*) *Post*, p. 272.
(*c*) Hawk. P. C. b. 2, c. 12, s. 16.
(*d*) 24 & 25 Vict. c. 96, s. 103.
(*e*) *Downing* v. *Capel*, L. R. 2 C. P. 461.
(*f*) *Griffith* v. *Taylor*, 2 C. P. D. 194.

Warrant. The person cannot be so apprehended afterwards (*a*), except for felony. (*b*)

The following are constituted misdemeanors by this Act:—

Larceny after a previous conviction for felony (*c*) or indictable misdemeanor. (*d*)

Inducing to execute a deed by fraud. (*e*)

Dog-stealing (*f*) or possession of stolen dogs (second offence) (*g*), or taking money to restore. (*h*)

Embezzlement by agents (*i*), bankers (*k*), factors (*l*), trustees (*m*), directors (*n*)—directors keeping fraudulent accounts (*o*), destroying books (*p*), or publishing fraudulent statements. (*q*)

Setting engines for deer. (*r*)

Obtaining money by false pretences. (*s*)

Stealing fences (second offence). (*t*)

Taking fish in land belonging to dwelling-house—otherwise than angling. (*u*)

Stealing fruit. (*w*)

Killing hares, &c., in warren. (*x*)

Stealing oysters from beds. (*y*)

Shipwrecked goods—in possession without satisfactory account (*z*), offering for sale (*aa*).

Simple larceny. (*bb*)

Stealing domestic animals or birds (*cc*), or being

(*a*) *Fox* v. *Gaunt*, 3 B. & Ad. 798.
(*b*) *Beckwith* v. *Philby*, 6 B. & C. 635.
(*c*) *Ib.* s. 7.
(*d*) S. 8.
(*e*) S. 90.
(*f*) S. 18.
(*g*) S. 19.
(*h*) S. 20.
(*i*) S. 75.
(*k*) S. 76.
(*l*) S. 78.
(*m*) S. 80.
(*n*) S. 81.
(*o*) S. 82.
(*p*) S. 83.
(*q*) S. 84.
(*r*) S. 15.
(*s*) S. 88.
(*t*) S. 34.
(*u*) S. 24.
(*w*) S. 36.
(*x*) S. 17.
(*y*) S. 26.
(*z*) S. 65.
(*aa*) S. 66.
(*bb*) S. 4.
(*cc*) S. 21.

"The following principle may be laid down as containing in substance the doctrine on this subject. The officer as a minister of the law is bound to act on a reasonable charge of crime so as to bring an accused person before a magistrate. The very small evil of such a temporary apprehension in case of innocence is infinitely compensated by the advantage of the public peace in having crimes prevented and criminals instantly restrained, but there must be a direct charge to the officer or such a reasonable ground of suspicion before his eyes as may justify him in the eye of the law. He may do this without warrant. But the mere act of apprehension does not oblige him to continue the detention of the prisoner till brought before the magistrate. The charge may be retracted or his suspicion may vanish away. And these are the only grounds for the apprehension, so the absence of them is sufficient reason for the release of the accused. His duty is merely that of a zealous and faithful servant of the law." (*a*)

A peace officer may justify taking a person into custody charged with a felony although no felony was committed. (*b*)

Reasonable suspicion.

A constable having reasonable cause to suspect that a felony has been committed, is justified in arresting the party suspected, although it afterwards appears that no felony has been committed. (*c*)

But he acts at his peril, for if the party be innocent he is liable for false imprisonment. (*d*)

A police constable found N. with potatoes under his

(*a*) *M'Cloughan* v. *Clayton*, Holt, N. P. C. 478.

(*b*) *Hobbs* v. *Branscombe*, 3 Camp. 420.

(*c*) *Beckwith* v. *Philby*, 6 B. & C. 635.

(*d*) *Stonehouse* v. *Elliott*, 6 T. R. 315.

shirt which had been recently taken from the ground, and apprehended him. The arrest was held illegal. (*a*)

Swearing. Constables may immediately arrest anyone taking a profane oath within their hearing. (*b*)

Vagrants. "Any person whatsoever may apprehend any person who shall be found offending against this Act, and forthwith take and convey him or her before some justice of the peace to be dealt with in such manner as is heretofore directed, or deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed as aforesaid." (*c*)

Offenders under this Act are:

Beggars—habitual. (*d*)

Exposing person indecently—to insult female.

False collector of charitable contributions.

Fortune-telling or other deception.

Found on enclosed premises for unlawful purposes.

Frequenting wharves, &c., or public places with intent. (Suspected person or reputed thief.)

Must be seen more than once for frequenting. (*e*) A private house during a sale is a place of public resort. (*f*) But a highway is not necessarily so. (*g*)

Having possession of burglarious instruments or any weapon with intent.

Leaving wife and child whereby they become chargeable.

(*a*) *Reg.* v. *Phelps*, Car. & M. 180. (*b*) 19 Geo. 2, c. 21.
(*c*) 5 Geo. 4, c. 83, s. 6. (*d*) *Pointon* v. *Hill*, 12 Q. B. D. 306.
(*e*) *In re Cross*, 26 L. J. M. C. 28; *Clark* v. *The Queen*, 14 Q. B. D. 92. (*f*) *Sewell* v. *Taylor*, 30 L. J. M. C. 60.
(*g*) *In re Timson*, L. R. 5 Ex. 257.

7 & 8 Vict. c. 100, s. 6, renders mother liable in case of illegitimate child.

Arrest without warrant is not valid in this case. (*a*)

Obscene pictures—shewing.

Persons able wholly or in part able to maintain themselves refusing to work.

Persons apprehended as idle and disorderly, assaulting constable.

Playing or betting in any street or public place.

A railway-carriage is a public place under this section. (*b*) But not a tree in Hyde Park. (*c*). Halfpence are not instruments of gaming. (*d*)

Prison-breakers.

Wandering without visible means of subsistence and not giving good account of oneself. (*e*)

A man may be arrested as a person found in a dwelling-house, &c., with intent to commit a felony if he is seen in the dwelling-house, but gets out of it and is taken on fresh pursuit, and it makes no difference that he was not seen getting out of the house, and was found concealing himself to avoid being apprehended upon other premises near. (*f*)

A constable who had verbal directions from the magistrates to apprehend all persons playing at thimble-rig, attempted to apprehend the prisoner and his companions playing at it in a public fair. The constable, with assistance, took one of the party, but the prisoner and the rest rescued him and got off. In the evening of the

(*a*) *Horley* v. *Rogers*, 6 Jur. N. S. 605.

(*b*) *Exp. Freestone*, 25 L. J. M. C. 121; *Langrish* v. *Archer*, 10 Q. B. D. 44.

(*c*) *Doggett* v. *Catterns*, 12 L. T. N. S. 355.

(*d*) *Watson* v. *Martin*, 11 Jur. N. S. 321. (*e*) 5 Geo. 4, c. 83, ss. 3, 4.

(*f*) *R.* v. *Howarth*, 1 Moo. C. C. 207.

same day the constable found prisoner in a public-house not having been able to find him before, and endeavoured to apprehend him, stating what it was for. The prisoner escaped into a privy, and the constable calling the prosecutor to his assistance, they broke the door and endeavoured to take the prisoner, who thereupon stabbed the prosecutor. The conviction for feloniously cutting and maiming was held wrong. (*a*)

Canals and River Police.

Canals and rivers. Disorderly persons.

By 3 & 4 Vict. c. 50, s. 10—

"Any such constable may take into custody without a warrant, any loose, idle, and disorderly person whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanour or breach of the peace, or other offence contrary to the provisions of this Act, and every person whom he shall find between sunset and the hour of eight in the morning, lying or loitering in or upon any towing-path or in or upon any wharf, bridge, railway, quay, landing-place, lock, dock or upon the bank of any such canal or river, and not giving a satisfactory account of himself."

Offenders.

Having reasonable cause to suspect that a felony or offence against the Act has been or is about to be committed, he may enter on vessels "and take into custody all persons suspected of being concerned in such felonies or other offences." (*b*)

By s. 11, "Any person found committing any offence punishable upon summary conviction by virtue of this Act may be taken into custody without a warrant by any constable."

(*a*) *R.* v. *Gardner*, 1 Moo. C. C. 390. (*b*) Sec. 9.

"And also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained."

The following are misdemeanors under this Act:

Assaulting constables on duty. (*a*)

Injuring contents of packages. (*b*)

Possessing instruments, &c., for carrying away liquor, &c. (*c*)

Stolen property—offering in pawn. (*d*)

Metropolitan. (*e*)

Metropolitan.

In addition to the foregoing general powers of arrest, the following are possessed by the Metropolitan Police under special statutes:

Animals shewn, fed, shod or exercised in the street.

"Every person who shall to the annoyance of the inhabitants or passengers expose for show or sale (except in a market lawfully appointed for that purpose), or feed or fodder any horse or other animal, or shew any caravan containing any animal, or any other show or public entertainment, or shoe, bleed, or farry any horse or animal (except in cases of accident), or clean, dress, exercise, train or break any horse or animal." (*f*)

On footway.

"Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow upon any footway or curb-stone, or fasten any horse or other animal so that it can stand across or upon any footway." (*g*)

Aggravated assault.

"Any person who shall be charged by any other

(*a*) *Ib.* s. 6. (*b*) S. 8. (*c*) S. 7. (*d*) S. 12.

(*e*) *I.e.*, the Metropolitan Police District.

(*f*) 2 & 3 Vict. c. 47, s. 54 (1). (*g*) *Ib.* (7).

person with committing any aggravated assault, in every case in which such constable shall have good reason to believe that such assault has been committed, although not within view of such constable, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender." (*a*)

Street betting.

"Any three or more persons assembled together in any part of a street within the Metropolis for the purpose of betting" (*b*), or found on betting-houses after entry. (*c*)

Carriages standing.

"Every person who shall cause any cart, public carriage, sledge, truck or barrow (with or without horses) to stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers, except hackney carriages standing for hire in any place not forbidden by law, or who, by means of any cart, carriage, sledge, truck, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare." (*d*)

Repairing carriages in street.

"Every person who shall clean, make or repair any part of any cart or carriage, except in cases of accident where repair on the spot is necessary." (*e*)

Or driving on footway.

"Or draw or drive any cart or carriage on any footway." (*f*)

Cattle, negligent driving of.

"Every person who by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in any wise misbehave

(*a*) *Ib.* s. 65.
(*b*) 30 & 31 Vict. c. 134, s. 23.
(*c*) 16 & 17 Vict. c. 119, s. 12.
(*d*) 2 & 3 Vict. c. 47, s. 54 (6)
(*e*) *Ib.* (1).
(*f*) *Ib.* (7); *ante* p. 159.

himself in the driving, care, or management of such cattle, and also every person not being hired or employed to drive such cattle who shall wantonly and unlawfully pelt, drive, or hunt any such cattle." (*a*)

Or turning loose.

"Or who shall turn loose any horse or cattle." (*b*)

Cock-fighting.

Persons found on premises used for cock-fighting, &c., without lawful excuse. (*c*)

Any person wilfully damaging lamps or other property of vestries or district boards, or of the Metropolitan Board (*d*); and "every person who by creating any offence herein forbidden within the said district shall have caused any hurt or damage to any person or property, may be apprehended, with or without warrant, by any constable, and if he shall not upon demand make amends for such hurt or damage to the satisfaction of the person aggrieved, he shall be detained by the constable in order to be taken before a magistrate." (*e*)

Damages to person or property.

Disorderly persons.

"All loose, idle, and disorderly persons whom he (the constable) shall find disturbing the public peace, or whom he shall have just cause to suspect of any evil designs." (*f*) A constable is not justified under this section in laying hold of, pushing along the highway, and ordering to be off, a person found by him conversing in a crowd with another merely because the person with whom he happened to be conversing is known to be a reputed thief. (*g*)

"All loose, idle, and disorderly persons whom he shall

(*a*) *Ib.* (3). (*b*) *Ib.* (2) (*c*) S. 47.
(*d*) 18 & 19 Vict. c. 120, s. 206. (*e*) 2 & 3 Vict. c. 47, s. 62.
(*f*) 10 Geo. 4, c. 44, s. 7. (*g*) *Stocken* v. *Carter*, 4 C. P. 477.

find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanour or breach of the peace, and all persons whom he shall find between sunset and the hour of eight in the morning lying or loitering in any highway, yard or other place and not giving a satisfactory account of themselves." (*a*) (*b*)

Dramatic entertainment.

Persons found on premises licensed for dramatic entertainment without lawful excuse. (*c*)

Owner of ferocious dog.

Every person who shall "suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal." (*d*)

Furious driving.

"Every person who shall ride or drive furiously or so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare." (*e*)

Public entertainment.

Every one who shall shew any caravan containing any animal or any other show or public entertainment. (*f*)

Fairs.

Where fairs have been declared illegal, "every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix any booth, standing, or tent, and every person driving, accompanying, or conveyed in every such carriage (*g*), and every person resorting to such ground with any show or instrument of gambling or amusement." (*h*)

(*a*) 2 & 3 Vict. c. 47, s. 64;
(*b*) and *see Bowditch* v. *Balchin*, *post*, p. 166.
(*c*) S. 46. (*d*) *Ib.* s. 54 (2).
(*e*) *Ib.* (5). (*f*) *Ib.* (1), *ante*, p. 159.
(*g*) Carriages being upon the ground for the purpose of holding such fair. (*h*) *Ib.* s. 39.

Fences, defacing or damaging.

"Every person who without the consent of the owner or occupier shall affix any posting bill or other paper against or upon any building, wall, fence, or pale, or write upon, soil, deface, or mark any such building, wall, fence, or pale with chalk or paint, or in any other way whatsoever, or wilfully break, destroy, or damage any part of any such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat in any public walk, park, or garden." (*a*)

Firearms, fireworks, missiles and bonfires.

"Every person who shall wantonly discharge any firearm or throw or discharge any stone or other missile to the damage or danger of any person, or make any bonfire or throw or set fire to any firework." (*b*)

Gaming.

Persons found on gaming-houses may be arrested. (*c*)

Indecent prints, songs, and exhibitions.

"Every person who shall sell or distribute, or offer for sale or distribution, or exhibit to public view any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sing any profane, indecent, or obscene song or ballad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language to the annoyance of the inhabitants or passengers." (*d*)

Noisy instruments.

"Every person, except guards and postmen belonging to Her Majesty's Post-office in the performance of their duty, who shall blow any horn or use any other noisy instrument for the purpose of calling persons together, or of announcing any show or

(*a*) *Ib.* s. 54 (10). (*b*) *Ib.* (15).
(*c*) S. 48; 8 & 9 Vict. c. 109, s. 6.
(*d*) 2 & 3 Vict. c. 47, s. 54 (12).

entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms." (*a*)

Knocking at doors, ringing bells, extinguishing lamps.

"Every person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door-bell, or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp." (*b*)

Ladders, &c., on footway.

"Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, show-board or placard upon any footway, except for the purpose of loading or unloading any cart or carriage or of crossing the footway." (*c*)

Abusive language or behaviour.

"Every person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned." (*d*)

Playing games.

"Every person who shall fly any kite or play at any game to the annoyance of the inhabitants or passengers, or who shall make or use any slide upon ice or snow in any street or other thoroughfare to the common danger of the passengers." (*e*)

Prostitute soliciting.

"Every common prostitute or night-walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers." (*f*)

Regulations, disobedience to.

"Every person who after being made acquainted with the regulations or directions which the Commissioners of Police shall have made for regulating the route of horses, carts, carriages,

(*a*) *Ib.* (14) (*b*) *Ib.* (16). (*c*) *Ib.* (8).
(*d*) *Ib.* (13). (*e*) *Ib.* (17). (*f*) *Ib.* (11).

and persons during the time of Divine Service, and for preventing obstructions during public processions, and on other occasions heretofore specified, shall wilfully disregard or not conform himself thereunto." (*a*)

Also where special regulations for traffic in a particular district have been approved ten days previously by the Secretary of State, and notice thereof has been affixed in conspicuous places in that district twenty-eight days previous to that approval, and a copy has been published in the *London Gazette*.

"Any person who within view of such constable wilfully disregards or refuses to conform to any such regulation and refuses to give his name and address to such constable." (*b*)

Riding on shafts, or so as not to have proper control.

"Every person having the care of any cart or carriage who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same." (*c*)

River, ships on.

"It shall be lawful for every superintendent, inspector, or sergeant having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, boat, or other vessel lying in the said river, docks, or creeks," to board such ship, &c., "and take into custody all persons suspected of being concerned in such felonies." (*d*)

Stolen goods.

"Any person who may be reasonably suspected of

(*a*) *Ib.* (9). (*b*) 30 & 31 Vict. c. 134, s. 12.
(*c*) 2 & 3 Vict. c. 47, s. 54 (4). (*d*) S. 34.

having or conveying in any manner anything stolen or unlawfully obtained." (*a*)

Unknown offenders.

Any one sweeping dirt into sewers (*b*) or interrupting workmen of Metropolitan Board at their work (*c*) if unknown.

Generally.

"Any person who within view of any such constable shall offend in any manner against this Act and whose name and residence shall be unknown to such constable and cannot be ascertained by such constable." (*d*)

"And any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction by virtue of this Act." (*e*)

The allegation of an offence having been committed within view of a constable is not equivalent to "found committing." (*f*)

S. 24 of 2 & 3 Vict. c. 71, is supplemental only to this section, and they apply only to possession in the streets, and not to possession in a house. (*g*)

A constable of the city of London has no power under this Act to take a person into custody without warrant merely on suspicion that he has committed a misdemeanour.

Per Pollock, C.B.:—In a case in which the liberty of the subject is concerned we cannot go beyond the natural construction of the statute. (*h*)

The misdemeanours in this Act are—(*i*)

Breaking packages in order to spill contents (on river). (*k*)

(*a*) *Ib.* s 66. (*b*) 18 & 19 Vict. c. 120, ss. 205, 229.
(*c*) S. 208. (*d*) 2 & 3 Vict. c. 47, s. 63.
(*e*) S. 66. (*f*) *Simmons* v. *Milligen*, 2 C. B. 524.
(*g*) *Hadley*, app., *Perks*, resp., L. R. 1 Q. B. 444.
(*h*) *Bowditch* v. *Balchin*, 5 Ex. 378. (*i*) *See ante*, p. 140.
(*k*) 2 & 3 Vict. c. 47, s. 32

Cutting ropes, cables, &c. (*a*)

Being drunk and disorderly. (*b*)

Framing false bills of parcels. (*c*)

Letting articles fall into river with intent. (*d*)

Piercing casks, opening packages (river). (*e*)

Possessing instruments for unlawfully carrying away wine, &c. (*f*)

Receiving ship stores from seamen. (*g*)

Delivery at station-house.

"Every person taken into custody by any constable belonging to the Metropolitan Police without warrant, except persons detained for the mere purpose of ascertaining their name or residence, shall be forthwith delivered into the custody of the constable in charge of the nearest station-house." (*h*)

Municipal.

Municipal.

"A borough constable may while on duty apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watchhouse, in order that he may either be secured until he can be brought before a justice, or where the constable in attendance is impowered and thinks fit to take bail, give bail for his appearance before a justice." (*i*)

Consolidation of county and borough.

19 & 20 Vict. c. 69, s. 15. [Consolidation of county and borough police as to powers, privileges, duties and responsibilities.]

(*a*) *Ib.* s. 27.
(*b*) S. 58.
(*c*) S. 29.
(*d*) S. 28.
(*e*) S. 31.
(*f*) S. 30.
(*g*) S. 26.
(*h*) S. 69
(*i*) 45 & 46 Vict. c. 50, s. 193.

S. 31. [2 & 3 Vict. c. 93, 3 & 4 Vict. c. 88, and this Act to be construed together as one Act.]

Towns. (*a*)

Towns. Animals shewn, fed, shod or exercised in the street.

"Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal." (*b*)

Awnings.

Everyone "who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground." (*c*)

Carriages, &c., standing.

"Every person who causes any public carriage, sledge, truck, or barrow, with or without horses or any beast of burden, to stand longer than is necessary for loading or unloading goods or for taking up or setting down passengers (except hackney carriages and horses and other beasts of draught or burden standing for hire in any place appointed for that purpose by the Commissioners or other lawful authority), and every person who by means of any cart, carriage, sledge, truck, or barrow, or any animal or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction

(*a*) *I.e.*, any urban authority adopting the Act. See also 38 & 39 Vict. c. 55, *post*, p. 284.

(*b*) 10 & 11 Vict. c. 89, s. 28. (*c*) *Ib.*

in any public footpath or other public thoroughfare. (*a*) Or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary). (*b*)

Cattle slaughtering (street).

"Every person who slaughters or dresses any cattle or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot."

Cock-fighting.

All persons found on premises kept for cock-fighting, baiting or worrying animals, without lawful excuse. (*c*)

Dogs.

"Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal.

Every owner of any dog who suffers such dog to go at large knowing or having reasonable grounds for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state.

Every person who after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice. (*d*)

Driving.

Every person who at one time drives more than two carts or wagons, and every person driving two carts or wagons who has not the halter of the horse in the last cart or wagon securely fastened to the back of the first cart or wagon, or has such halter of a greater length from such fastening to the horse's head than four feet.

Every person who rides or drives furiously any horse or carriage or drives furiously any cattle.

(*a*) *Ib.* (*b*) *Ib.* (*c*) S. 36. (*d*) S 28.

Fire-arms, &c. (street).

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework.

Games.

Every person who flies any kite, or who makes or uses any slide upon ice or snow.

Goods projecting.

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway.

On footway.

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood upon any footway, except for the purpose of loading or unloading any cart or carriage or of crossing the footway.

Or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or strawboard, on any footway,

Indecent exposure.

Every person who wilfully and indecently exposes his person."

To sustain an indictment for a nuisance at *common law* by indecent exposure it has been held essential to prove that it was done in the sight of more than one person. (*a*)

Or publication.

"Every person who publicly offers for sale or distribution or exhibits to public view any profane, indecent or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene

(*a*) *R.* v. *Webb*, 18 L. J. N. S. (M. C.) 39.

song or ballad, or uses any profane or obscene language.

Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguished the light of any lamp." Knocking at doors, &c.

Where a person by knocking loudly at the door of a dwelling-house in the night-time very much annoyed and disturbed the persons therein and upon being requested to go away refused, but upon the inmates calling for the police ran off, and upon a constable coming up he and the person who called him pursued the party into an adjoining street where they arrested him, it was *held* that as he was not in the act of knocking and not likely to renew it, the arrest was not justifiable. (*a*)

"Every person who places any line, cord or pole across any street, or hangs or places any clothes thereon. Lines across street.

Every person who beats or shakes any carpet, rug, or mat (except door mats beaten or shaken before the hour of eight in the morning). Mats.

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal or rubbish on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things Offensive matter.

(*a*) *Baynes* v. *Brewster*, 11 L. J. M. C. 5.

causes them to be removed as soon as the occasion for them ceases.

Pigs. Every person who keeps any pigstye to the front of any street not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street so as to be a common nuisance.

Pits unfenced. Every person who leaves open any vault or cellar or the entrance from any street to any cellar or room underground without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto.

Prostitute importuning. Every common prostitute or night-walker loitering and importuning passengers for the purpose of prostitution.

Riding on shafts or without proper control. Every person having the care of any wagon, cart, or carriage who rides on the shafts thereof, or who without having reins and holding the same rides upon such wagon, cart, or carriage, or on any animal drawing the same, or who does not in meeting any other carriage keep his wagon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his wagon, cart, or carriage on the right or off side of the road (except in cases of actual necessity or some sufficient reason for deviation), or who by obstructing the street wilfully prevents any person or carriage from passing him or any wagon, cart or carriage under his care.

Riding, &c. on footway. Every person who leads or rides any horse or other animal, or draws or drives any cart, carriage, sledge,

truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway.

Rubbish thrown from roof.

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish or other thing, except snow thrown so as not to fall on any passenger.

Timber, stones, lime, &c.

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime, or who throws or lays down any stones, coals, slates, shells, lime, bricks, timber, iron or other materials (except building materials so inclosed as to prevent mischief to passengers), or who causes any tree or timber or iron beam to be drawn in or upon any carriage without having sufficient means of safely guiding the same.

Window boxes.

Every person who fixes or places any flower-pot or box or other heavy article in any upper-window without sufficiently guarding the same against being blown down.

Window sill, standing on.

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story." (*a*)

Generally.

"Any person found committing any offence punishable either upon indictment or as a misdemeanour, upon summary conviction by virtue of this or the special Act may be taken into custody without a warrant by any of

(*a*) 10 & 11 Vict. c. 89, s. 28.

the said constables, . . . and the persons so arrested shall be taken as soon as conveniently may be before some justice to be examined and dealt with according to law; provided always, that no person arrested under the powers of this Act shall be detained in custody by any constable or other officer without the order of some justice longer than shall be necessary for bringing him before a justice, or than forty hours at the utmost." (*a*)

The misdemeanours in this Act are cab-drivers misbehaving themselves (*b*), persons drunk and disorderly (*c*), and persons guilty of pound-breach. (*d*)

Using loud words in the street, though it is disorderly, is not an offence for which a party should be taken into custody, and if the person is so taken an action of false imprisonment will lie. (*e*)

A constable has no right to arrest and handcuff a disorderly person known to him unless he be committing or on the point of committing a breach of the peace, and the person so attempted to be arrested and his companions are justified in using necessary force to prevent such an arrest, but if they combine to use unnecessary violence for the purpose, and in the course of that violence a constable is killed, it is manslaughter only and not murder. But if the constable had given over all intention of making the arrest, and the man and his companions knowing it continue their violence towards the constable and he is thereby killed, it is murder in each. (*f*)

A constable arresting a man on suspicion of felony must take him before a justice to be examined as soon as he reasonably can, and therefore a plea of justification of

(*a*) *Ib.* s. 15. (*b*) S. 61. (*c*) S. 29.
(*d*) S. 26. (*e*) *Hardy* v. *Murphy*, 1 Esp. 294.
(*f*) *R.* v. *Lockley*, 4 F. & F. 155.

detention for three days in order that the party whose goods had been stolen might have the opportunity to collect his evidence, and bring them to prove the felony, was held bad on demurrer. *Semble*, that a constable cannot justify handcuffing a prisoner unless he has attempted to escape, or unless it be necessary in order to prevent his doing so. (*a*)

A constable on duty at a police station is justified in detaining a person brought there in charge and delivered to him by a police constable, although he may have been illegally arrested, as *e.g.* if arrested without warrant upon suspicion of having been guilty of perjury. (*b*)

(*a*) *Wright* v. *Court*, 4 B. & C. 596.
(*b*) *Bowditch* v. *Fossbury*, 19 L. J. Ex. 339.

The following it is believed is a complete list of felonies for which a constable can arrest without warrant.

Abduction for fortune or by force with intent.
Abortion, attempt to procure.
Animals, killing or maiming.
Aqueducts, malicious injury.
Arson—coal mines, crops, corn stacks, ships in dock and things in buildings, trees—or attempts.
Assault, with intent to rob or by person armed or by two or more.

Bank notes or paper making, &c.
Bigamy.
Bridges, malicious injury.
Buoys, interfering with.
Burglary.

Child-stealing.
Children under thirteen, carnally abusing.
Chloroform, administering with intent.
Choke, attempt to, with intent.
Coin clippings, possessing.
Coining tools, making, &c.
Colouring to represent gold or silver.
Conspiracy to commit felony.
Copper counterfeiting, or dealing in same—having three or more pieces after previous conviction.
Crime, accusing of, extorting by.

Deer-taking.
Desertion (army).

Embezzlement.
Escape, or aiding in.
Exchequer bills, &c., making plates or paper.
Explosion with intent.

Foreign coin, uttering, third offence.
Foreign gold and silver, counterfeiting, or dealing in same.
Forgery, and instruments relating to title.

Gold, counterfeiting, or dealing in same, having three or more pieces after previous conviction.
Goods in manufacture, malicious injury to.
Grievous bodily harm with intent to maim, resist apprehension or by explosion.
Gunpowder, placing near ships, buildings, &c., with intent.

Hopbinds, destroying.
House, demolishing, entering at night with intent, malicious injury to, so as to endanger life, throwing gunpowder on, with intent.
Housebreaking, or, if intended felony not committed.

Impairing gold or silver coin.

Larceny—by bailee, bills, bonds; by clerks, of cows, deeds, deer in enclosure, or after previous conviction elsewhere; in dwelling-house to £5 or to any amount if bodily fear occasioned; goods in process of manufacture, or in vessels, docks or wrecks; horses; by lodgers, of materials for buildings and fixtures, or in mines, notes and other valuable securities; oysters in fishery; from the person, plants in gardens after summary conviction; by public officers, of records; by servants, of sheep, trees in garden value £1 or elsewhere £5, or £1 after two summary convictions; wills.

Machines, malicious injury.
Manslaughter.
Mines, malicious injury.
Mint, conveying bullion or tools out of.
Murder, or accessory after fact, or attempt.
Mutiny.

Oaths, unlawful (seditious).

Penal servitude, at large during term of.
Personation—or of bail, to obtain property, of owners of stock, or of soldiers.

Piles, cutting.
Piracy.
Poison, administering with intent or so as to endanger.
Prison, breach of, if for felony.
Prisoner of war, aiding to escape.

Railway, injuring with intent to obstruct.
Railway passengers, endangering safety.
Rape.
Rescue, if original convicted of felony.
Riot.
River-banks, interfering with.
Robbery, by person armed, or by two or more.

Sacrilege, or if intended felony not committed.
Sea-banks, interfering with.
Signals, altering.
Silver, counterfeiting or dealing in same.
Slave trade offences.
Sluices, opening.
Smuggling, shooting at vessels, six or more together, three or more armed and assembled, two or more armed or disguised, wounding officers.
Stolen property, receiving, where principal offence felony, taking reward to help to.
Stores, public, obliterating marks.

Threatening letter, sending or extorting by.
Treason.
Treason-felony.
Trees, destroying.

Unnatural crime.

Vessels, injury by explosion or otherwise.
Viaducts, malicious injury.

Wreck, impeding escape from or interfering with.

ENTRY.

Entry. Explosives.

The powers under the Explosives Acts are contained in 38 & 39 Vict. c. 17, ss. 73, 74, 75. (*a*)

Factories.

The power under the Factory Act is contained in 41 & 42 Vict. c. 16, s. 68 (2). (*b*)

Licensing. Billiards.

All constables and officers of police may "enter into any house,-room, or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, when and so often as such constables and officers shall think proper." (*c*)

Refreshment houses.

All constables and officers of police, when and so often as they shall respectively think proper, may "enter into all houses licensed as refreshment houses under the authority of this Act and into and upon the premises belonging thereto." (*d*)

Premises generally

"A constable may at all times enter on any licensed premises, he may also examine every room and part of such premises, and take account of all intoxicating liquor stored therein." (*e*)

Spirit grocer.

"It shall be lawful for any superintendent of police, or any constable duly authorized for such purpose by any justice or superintendent within the limits of his jurisdiction, to enter into any premises kept by a spirit grocer for selling intoxicating liquors at any time or hour during which the sale of such liquors by such spirit grocer is prohibited by this Act." (*f*)

Occasional licences.

"Any constable may for the purpose of preventing or

(*a*) *Post*, pp. 231 *et seq.*
(*b*) *Post*, p. 239.
(*c*) 8 & 9 Vict. c. 109, s. 14.
(*d*) 23 & 24 Vict. c. 27, s. 18.
(*e*) 35 & 36 Vict. c. 94, s. 35.
(*f*) *Ib.* s. 87.

detecting the violation of any of the provisions of the principal Act (i.e., 35 & 36 Vict. c. 94) or this Act which it is his duty to enforce, at all times enter on any licensed premises or any premises in respect of which an occasional licence is in force." (*a*)

Public Health.

"Whenever it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorize any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances.

Where local authority in default.

"But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent or without the warrant of a justice for the purpose of carrying into effect this enactment." (*b*)

Slaughter-houses

Any constable from time to time, and as often as he shall think fit at all reasonable times in the daytime by authority of this Act, either alone or accompanied by any inspector appointed or to be appointed under 26 Geo. 3, c. 71, may "enter upon and view and inspect all and every the houses, stables, sheds, yards, grounds, and premises for the keeping of which any such licence shall have been granted as aforesaid, and also to inspect or take an account of all or any of the horses or other cattle which shall from time to time be found upon such premises or any part thereof." (*c*)

Stolen goods

"Any constable may under the circumstances hereinafter in this section mentioned be authorized in writing

(*a*) 37 & 38 Vict. c. 49, s. 16. (*b*) 38 & 39 Vict. c. 55, s. 106.
(*c*) 7 & 8 Vict. c. 87, s. 4.

by a chief officer of police to enter, and if so authorized may enter any house, shop, warehouse, yard, or other premises in search of stolen property." (*a*)

Premises occupied by convicted persons

Taxes.

The powers under the Tax Acts are contained in 43 & 44 Vict. c. 19, s. 86. (*b*)

Threshing machines.

"Any constable may at any time enter on any premises on which he has reasonable cause to believe that a threshing machine is being worked contrary to the provisions of this Act for the purpose of inspecting such machine." (*c*)

Trespassers.

Peace officers have no right to turn trespassers off land except upon the order of the owner of the land. (*d*)

Warrants of distress, and recovery of tenements.

Warrants of distress (*e*) and for the recovery of small tenements are executed by constables. (*f*)

By 1 & 2 Vict. c. 74, s. 1:

Recovery of tenements

Where the justices are satisfied that premises under the annual value of £20 are held over wrongfully by a tenant after the expiration of his term, they may "issue a warrant under their hands and seals to the constables and peace officers of the district, division or place within which the said premises or any part thereof shall be situate, commanding them within a period to be therein named, not less than twenty-one nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent; provided always that entry upon any such warrant shall not be made on a Sunday, Good Friday or Christmas day, or at any time

(*a*) 34 & 35 Vict. c. 112, s. 16.
(*b*) *Ante*, p. 113, and see *R.* v. *Clarke*, *ante*, p. 114.
(*c*) 41 & 42 Vict. c. 12, s. 4. (*d*) *R.* v. *Cox*, 1 F. & F. 664.
(*e*) 42 & 43 Vict. c. 49, s. 43 (1).
(*f*) 1 & 2 Vict. c. 74, s. 1.

except between the hours of nine in the morning and four in the afternoon.

By 42 & 43 Vict. c. 49, s. 43:

Distress. Execution.

(1.) A warrant of distress shall be executed by or under the direction of a constable, and

Sale.

(2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent, and

(3.) Subject as aforesaid the distress shall be sold within the period fixed by the warrant, and if so fixed then within the period of fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress are sooner paid, and

(4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark . . .

Goods not to be removed.

Excessive charges.

(5.) [Imposes a fine of £5 on making excessive charges or other exaction.]

Expenses account may be inspected. and copied.

(6.) [An account of the costs and charges is to be sent to the Clerk of the Court by the constable], the person upon whose goods the distress was levied may within one month after the levy of the distress inspect such account

without fee or reward at any reasonable time to be appointed by the Court and take a copy of such account.

(7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant, and

Overplus to be rendered to the owner.

(8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the Clerk of the Court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

Execution to be superseded on payment with costs.

When these warrants relate to rates, 57 Geo. 3, c. 93, and 7 & 8 Geo. 4, c. 17, will apply. (*a*)

Rates.

The following are special powers.

Canal and River Police.

Every constable appointed as aforesaid having just cause to suspect that any felony or any other offence contrary to the provisions of this Act has been or is about to be committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, may enter, at all times as well by night as by day, into and on every such boat or other vessel and therein take all necessary measures for the prevention or detection of all felonies or other

Entry on vessels.

(*a*) *Post*, p. 263.

offences which he has just cause to suspect to have been or to be about to be committed. (*a*)

Metropolitan.

Metropolitan. Betting.

If any superintendent belonging to the Metropolitan Police Force shall report in writing to the commissioners that there are good grounds for believing and that he does believe that any house, office, room or place within the Metropolitan Police District is kept or used as a betting house or office contrary to this Act, it shall be lawful for either of the said commissioners by order in writing to authorize the superintendent to enter any such house, office, room or place with such constables as shall be directed by the commissioners to accompany him, and if necessary to use force for the purpose of effecting such entry whether by breaking open doors or otherwise. (*b*)

Places used for cock-fighting, &c.

"The commissioners may by order in writing authorize any superintendent belonging to the Metropolitan Police Force with such constables as he shall think necessary to enter any premises kept or used for any of the purposes aforesaid" (*c*), and,

Dramatic entertainment.

"Any house or room kept or used within the said district for stage-plays or dramatic entertainments into which admission is obtained by payment of money and which is not a licensed theatre, at any time when the same shall be open for the reception of persons resorting thereto." (*d*)

Gaming-house.

The said commissioners may by order in writing "authorize a superintendent to enter any such (*e*) house, room, or place with such constables as shall be directed

() 3 & 4 Vict. c. 50, s. 9.
(*b*) 16 & 17 Vict. c. 119, s. 12.
(*c*) 2 & 3 Vict. c. 47, s. 47.
(*d*) S. 46.
(*e*) For gaming.

by the commissioner to accompany him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise." (*a*)

Licensing (Dock-yards).

A constable (employed locally under the Dockyard Acts) demanded without a warrant to enter the appellant's licensed ale-house, situate within the fifteen miles (*b*) but without the yards to search for absentees from the navy. The appellant prevented the respondent's entering, and was convicted by the justices of resisting a constable in the execution of his duty. *Held*, upon a case stated, that the respondent had no authority to do what he demanded, and that the appellant was wrongly convicted.

Per Cockburn, C.J.:—The Act which gives powers and privileges usually belonging to the local police to be exercised and enjoyed by the metropolitan police confines their plenary use to the dockyards and stations; as regards other places within the fifteen miles, those powers and privileges are with respect to Crown property only and persons subject to discipline. No power is given to the metropolitan constable to force his way into a house against the will of the occupier, even to search for such property or persons. The metropolitan police have but a limited authority in the districts to which they are appointed, and they are not empowered to act in all matters as if they were the local police. Here the appellant was justified in resisting the respondent's entry and the justices have made a mistake in convicting. (*c*)

Common lodging-houses.

Common lodging-houses are open to inspection at "all times when required by any officer of the local authority. (*d*).

(*a*) 8 & 9 Vict c. 109, s. 6. See also 2 & 3 Vict. c. 47, s. 48.
(*b*) See 23 & 24 Vict. c. 135. (*c*) *Turner* v. *Ford*, 37 L. T. 352.
(*d*) 14 & 15 Vict. c. 28, s. 12—confined to Metropolitan Police District only by 38 & 39 Vict. c. 55, s. 343.

Nuisances.

"In any place within the jurisdiction of a nuisance authority, the chief officer of police within that place, by and under the directions of one of Her Majesty's principal Secretaries of State, on its being proved to his satisfaction that the nuisance authority has made default in doing its duty, may institute any proceeding which the nuisance authority of such place might institute with respect to the removal of nuisances: Provided always, that no officer of police shall be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent or without the warrant of a justice of the peace for the purpose of carrying into effect this Act." (*a*)

Vessels.

"Any superintendent or inspector belonging to the Metropolitan Police Force shall have power by virtue of his office to enter at all times with such constables as he shall think necessary, as well by night as by day, into and upon every ship, boat, or other vessel (not being then actually employed in Her Majesty's service) lying in the said river or creeks or in any dock or docks thereto adjacent and into every part of every such vessel, for the purpose of inspecting and upon occasion directing the conduct of any constable who may be stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanour." (*b*)

"He may also enter at all times, as well by night as

(*a*) 29 & 30 Vict. c. 90, s. 16, and see 38 & 39 Vict. c. 55, s. 313.
(*b*) 2 & 3 Vict. c. 47, s. 33.

by day, into and upon every such ship, boat, or other vessel, and therein take all necessary measures for the effectual prevention or detention of all felonies which he has just cause to suspect to have been or to be about to be committed in or upon the said river, docks, or creeks." (*a*)

Towns. *Towns.*

By 10 & 11 Vict. c. 89, s. 36, where premises are kept for the purposes of cock-fighting, &c., the Commissioners (*b*) may by order in writing authorize the superintendent constable with such constables as he thinks necessary to enter any premises kept or used for any of the purposes aforesaid."

(*a*) *Ib.* s. 34.
(*b*) *I.e.*, the persons authorized to carry out the Act.

SEARCH.

Search. Game.

Any constable may "in any highway, street, or public place, search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of a gun, or nets or engines used for the killing or taking game." (*a*)

It is not necessary that any game should be found in the nets (*b*) but the game (if any) must be seized on the highway and found on the defendant's person. (*c*)

Stolen property.

In the case of stolen property he may when duly authorized by any chief officer of police search and seize and secure any property he may believe to have been stolen in the same manner as he would be authorized to do if he had a search warrant, and the property seized, if any, corresponded to the property described in such search warrant . . ."

"It shall be lawful for any chief officer of police to give such authority as aforesaid in the following cases, or either of them:

Premises occupied by convicted persons.

(1) When the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves; or

(*a*) 25 & 26 Vict. c. 114, s. 2.
(*b*) *Jenkins* v. *King*, L. R. 7 Q. B. 480
(*c*) *Turner* v. *Morgan*, L. R. 10 C. P. 537.

(2.) When the premises to be searched are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty and punishable by penal servitude or imprisonment.

"And it shall not be necessary for such chief officer of police on giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods." (*a*)

Metropolitan.

Metropolitan. Gaming

The following powers refer only to the metropolis.

The superintendent may "with the assistance of any constable or constables accompanying him, search all parts of the house, room, or place which he shall have so entered where he shall suspect that tables or instruments of gaming are concealed, and all persons whom he shall find therein." (*b*)

Gunpowder.

He may also, with such constables as he shall think necessary, at any time between sun-rising and sun-setting, enter any ship, boat, or vessel (except Her Majesty's ships) in the said river (*c*), docks, and creeks, and search the same for unlawful quantities of gunpowder. (*d*)

(*a*) 34 & 35 Vict. c. 112, s. 16.
(*b*) 8 & 9 Vict c. 109, s. 7. See s. 6, *ante*, p. 163.
(*c*) Thames. (*d*) 2 & 3 Vict. c. 47, s. 35.

Seizure and Detention.

Seizure and detention. Contagious Diseases (animals).

Where an offence is committed or supposed to have been committed against the Contagious Diseases (Animals) Act "the constable may, whether stopping or detaining or apprehending the person or not, stop, detain and examine any animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to or into any place or district wherefrom or whereout it was unlawfully removed, and execute and enforce that requisition." (*a*)

Stray dogs.

"Any police officer or constable may take possession of any dog that he has reason to suppose to be savage or dangerous, straying on any highway and not under the control of any person, and may detain such dog until the owner has claimed the same and paid all expenses incurred by reason of such detention." (*b*)

Game.

He may also stop and search any cart or other conveyance in or upon which such constable or peace officer should have good cause to suspect that any such (*c*) game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, seize and detain such game, article, or thing. (*d*)

Vagrants.

"Any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may take any horse, mule, ass, cart, car,

(*a*) 41 & 42 Vict. c. 74, s. 50. (*b*) 34 & 35 Vict. c. 56, s. 1.
(*c*) *See* 25 & 26 Vict. c. 114, s. 2, *ante*, p. 188. (*d*) *Ib.*

caravan or other vehicle or goods in the possession or use of such person, and take and convey the same as well as such person before some justice of the peace." (*a*)

Money on a prisoner's person which has been taken from him and which has nothing to do with the charge has been ordered to be given up (*b*). It is not however a debt due from the police. (*c*)

Canal and River Police.

Canal and River. Boats or carriages. Stolen property.

"Every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found." (*d*) and take charge of all property so suspected to be stolen or embezzled." (*e*)

Metropolitan.

Metropolitan. Betting.

All lists, cards or other documents relating to racing or betting found on any betting-house or premises may be seized. (*f*)

Dogs.

"The police may take possession of any dog found in any street within the Metropolis and not under the control of any person, and may detain such dog until the owner has claimed the same and paid all expenses incurred by reason of such detention." (*g*)

Furniture removing.

"Any constable may stop and detain until due inquiry can be made all carts and carriages which he shall find employed in removing the furniture of any house or

(*a*) 5 Geo. 4, c. 83, s. 8. (*b*) *R.* v. *O'Donnel*, 7 C. & P. 138.
(*c*) *Bice* v. *Jarvis*, 49 J. P. 264. (*d*) 3 & 4 Vict. c. 50, s. 11.
(*e*) S. 9. (*f*) 16 & 17 Vict. c. 119, s. 12.
(*g*) 30 & 31 Vict. c. 134, s. 18.

lodging between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent." (*a*)

Gaming tables.

He may also "seize all tables and instruments of gaming found in such house or premises, and also all money and securities for money found therein." (*b*)

Gunpowder on vessels.

He may also exercise the same powers of seizing, removing to proper places, and detaining all such unlawful quantities of gunpowder found on board every such ship, boat, or vessel, and the barrels or other packages in which such gunpowder shall be, as are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by virtue of 12 Geo. 3, c. 61. (*c*)

Stolen goods.

"Every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found." (*d*)

Generally.

"Whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing shall be taken into the custody of any constable under the provisions of this Act, it shall be lawful for any constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expenses

(*a*) 2 & 3 Vict. c. 47, s. 67.

(*b*) 8 & 9 Vict. c. 109, ss. 6 & 7, and 2 & 3 Vict. c. 47, s. 48.

(*c*) S. 35.

(*d*) *Ib.* ss. 66 and 34. See also 34 & 35 Vict. c. 112, s. 16, *ante*, p. 181.

which may have been necessarily incurred for taking charge of and keeping the same." (*a*)

Towns.

Towns. Impounding cattle.

"If any cattle be at any time found at large in any street within the limits of the special (*b*) Act without any person having the charge thereof, any constable or officer of police . . . may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings besides the reasonable expense of impounding and keeping such cattle." (*c*)

(*a*) 2 & 3 Vict. c. 47, s. 68.

(*b*) *I.e.*, any Act passed thereafter for the regulation of towns, *e.g.*, Public Health, *post*, p. 282.

(*c*) 10 & 11 Vict. c. 89, s. 24.

Taking Bail.

Taking Bail.

"A person taken into custody for an offence without a warrant shall be brought before a Court of summary jurisdiction as soon as practicable after he is so taken into custody, and if it is not or will not be practicable to bring him before a Court of summary jurisdiction within twenty-four hours after he is so taken into custody a superintendent or inspector of police or other officer of police of equal or superior rank, or in charge of a police-station, shall inquire into the case, and, except where the offence appears to such superintendent, or inspector or officer, to be of a serious nature, shall discharge the prisoner upon entering a recognizance with or without sureties for a reasonable amount to appear before some Court of summary jurisdiction at the day, time, and place named in the recognizance." (*a*)

A similar power is conferred on the Metropolitan Police by 10 Geo. 4, c. 44, s. 9, and 2 & 3 Vict. c. 47, ss. 70–72.

Chimney-Sweeps and Pedlars.

Chimney-sweeps and pedlars.

Chimney-sweep to give name and address and produce certificate.

'Every person carrying on the business of such chimney-sweeper as aforesaid shall, when required by any justice or constable or peace officer, give his name and address." (*b*)

"Where such person carries on the business of a chimney-sweeper as aforesaid he shall on demand produce and show his certificate (if any) to any justice or constable

(*a*) 42 & 43 Vict. c. 42, s. 38.
(*b*) 38 & 39 Vict. c. 70, s. 16.

or peace officer, and allow it to be read and copied by the person to whom it is produced." (*a*)

"Any pedlar shall at all times on demand produce and shew his certificate to any constable or officer of police." (*b*) Pedlar to produce certificate.

He must also if required allow his pack to be inspected. (*c*) Pack to be inspected.

Customs Laws.

The powers under the customs laws are contained in sections 190, 199, 202, 204 & 205 of 39 & 40 Vict. c 36. (*d*) Customs laws.

Sale or Destruction of Dogs.

"When any dog taken in pursuance of this Act has been detained for three clear days where the owner is not known, or five clear days where he is so known, without the owner claiming the same and paying all expenses incurred by its detention, the chief officer of police of the district in which such dog was found may cause such dog to be sold or destroyed." (*e*) *Dogs, sale or destruction of.*

Metropolitan.

Any constable may "destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state."(*f*) *Metropolitan.*

Where regulations have been issued for muzzling dogs and for contravention thereof any dog is detained and "has remained in the possession of the police for three clear

(*a*) *Ib.* s. 17. (*b*) 34 & 35 Vict. c. 96, s. 17.
(*c*) S. 19. (*d*) *Ante*, pp. 87 to 95. (*e*) 34 & 35 Vict. c. 56, s. 1.
(*f*) 2 & 3 Vict. c. 47, s. 61.

days without the owner claiming the same and paying all expenses incurred by its detention, it may be sold or destroyed . . ." (*a*)

Excise Laws.

Excise laws.

The powers under the excise laws are contained in 7 & 8 Geo. 4, s. 53, ss. 22, 40, 64, 108; 43 & 44 Vict. c. 20, ss. 29 & 30; c. 24, ss. 137, 139, 145, 146; and 44 & 45 Vict. c. 12, s. 12. (*b*)

Fairs.

Metropolitan.

Fairs. Metropolis.

Where a fair has been declared unlawful "the Commissioners of Police may direct any constable to remove every booth, standing, and tent, and every carriage of whatsoever kind conveyed to or being upon the ground for the purpose of holding or continuing such fair." (*c*)

Parliament.

Parliament.

Constables may be required to assist in carrying out the orders of the Houses of Parliament. (*d*)

Street Musician.

Metropolis.

Street musician. Metropolis.

Any householder may "by any police constable require any street musician to depart from the neighbourhood of the house of such householder on account of the illness of any inmate of such house or for other reasonable cause." (*e*)

(*a*) 30 & 31 Vict. c. 134, s. 18. (*b*) *Ante*, pp. 100 to 112.
(*c*) 2 & 3 Vict. c. 47, s. 39, and see 31 & 32 Vict. c. 106, s. 2.
(*d*) *Ante*, pp. 4 to 10. (*e*) 2 & 3 Vict. c. 47, s. 57.

Traffic.

Metropolitan.

Traffic. Metropolis.

The commissioners have power to make regulations as to traffic during Divine Service or at any time when the streets are liable to be thronged or obstructed. (*a*) They may also make regulations within special limits under the approval of the Secretary of State. (*b*)

Towns.

Towns.

A similar power to that relating to the Metropolis is conferred on local authorities by 10 & 11 Vict. c. 89, ss. 21, 22.

(*a*) *Ib.* ss. 51, 52. (*b*) 30 & 31 Vict. c. 134, s. 12, *ante*, p. 165.

WARRANTS.

Warrants.

5 Geo. 4, c. 18, s. 6, authorizing constables to execute any warrant of any justice, &c., within any parish, &c., within the jurisdiction of the justice, &c., was held not to apply to warrants issued by the judges of the Court of Queen's Bench, but is confined to warrants issued by justices of the peace having limited jurisdiction only. (*a*)

A joint warrant to two may be well executed by one. (*b*)

On a warrant to take loose and disorderly persons, a constable took up a woman of character: *Held* that he could not justify the arrest. (*c*)

A magistrate's warrant of commitment upon a conviction for a penalty, following the form in 11 & 12 Vict. c. 43, schedule O, 1, and addressed to the constable of A., can only be executed by a parish constable, not by a county police constable stationed at A. (*d*)

A constable having a warrant to apprehend A., gave it to his son, who in attempting to arrest A. was stabbed by him with a knife which A. happened to have in his hand at the time, the constable being then in sight but a quarter of a mile off. The arrest was held illegal, and if death had ensued this would have been manslaughter only, unless it was shewn that A. had prepared the knife beforehand to resist illegal violence. (*e*)

(*a*) *Gladwell* v. *Blake*, 1 C. M. & R. 636.

(*b*) *Lee* v. *Vesey*, 1 H. & N. 30.

(*c*) *Dawson* v. *Clark*, 1 Bla. 563.

(*d*) *R.* v. *Saunders*, L. R. 1 C. C. 75.

(*e*) *R.* v. *Patience*, 7 C. & P. 775.

[Constables are to execute warrants issued by Courts of summary jurisdiction.] (*a*)

If a constable stay an unreasonable time in premises in order to execute a warrant he is liable in trespass. (*b*)

In order to justify an arrest by an officer under a warrant for a mere misdemeanour, it is necessary that he have the warrant on him at the time. Therefore in a case where the officer although he had seen the warrant had it not on him at the time, and it did not appear that the party knew it; it was *held* that the arrest was not lawful, and the person against whom the warrant was issued resisting the apprehension and killing the officer, that it was not murder, and the prisoner was convicted of manslaughter only. (*c*)

When a warrant has been issued to apprehend a person for an offence less than felony, the police officer who executes it must have the warrant in his possession at the time of the arrest. The appellant having assaulted the constable while arresting him: it was *held* that he could not be convicted of assaulting a constable in execution of his duty. (*d*)

A constable who makes an arrest under a warrant from a justice of the peace for disobedience to a bastardy order, is bound to have the warrant in his possession at the time, and this although the warrant was in the possession of his superior officer at the station-house and although the officer making the arrest was not called on to shew it. (*e*)

(*a*) 42 & 43 Vict. c. 49, s. 43 (1), and *ante*, p. 182.

(*b*) *Peppercorn* v. *Hoffman*, 9 M. & W. 628.

(*c*) *R.* v. *Chapman*, 12 Cox, C. C. 4.

(*d*) *Codd.*, app., *Cabe*, resp., 1 Ex. D. 352.

(*e*) *Galliard*, app., *Laxton*, resp., 2 B. & S. 363.

[Constables are authorized to execute warrants out of their districts provided they are executed within the jurisdiction of the justice granting or backing the same.] (*a*)

C. was convicted of an assault on two police constables of the county police of Worcester in the execution of their duty, who were apprehending him in the city of Worcester under a warrant issued by two justices of and for the county of Worcestershire for his commitment to prison for default in payment of a fine, but not backed by any justice of and for the city of Worcester. Worcester is a place having a separate commission of the peace, with exclusive jurisdiction and a separate police force. C. was not pursued from the county but found in the city: *Held*, that the conviction was wrong, that the constables were not acting in the execution of their duty in so executing the warrant. (*b*)

Criminal law amendment.

Any person authorized by warrant to search for any woman or girl may enter (if need be by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom:

"Provided always, that every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other officer of police, who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the justice shall otherwise direct." (*c*)

Under this section the justice's decision that there is reasonable cause for suspicion is a protection to a person who *bonâ fide* applies for a search warrant, and is an

(*a*) 11 & 12 Vict. c. 43, s. 19.
(*b*) *R.* v. *Cumpton*, 5 Q. B. D. 341.
(*c*) 48 & 49 Vict. c. 69, s. 10.

answer to an action for maliciously causing the warrant to issue. (*a*)

Poor-rate. A warrant which commanded a constable to apprehend and take A. to the House of Correction, there to remain until payment of arrears of poor-rate *and costs* awarded was held bad, and an action of trespass was held to lie against the justice and the constable for the arrest and imprisonment. (*b*)

Stolen goods. Where a constable having a warrant to search for certain specific goods alleged to have been stolen, found and took away these goods and certain others also supposed to have been stolen, but which were not mentioned in the warrant and were not likely to be of use in substantiating the charge of stealing the goods mentioned in the warrant: *Held*, that the constable was liable to an action of trespass. (*c*)

(*a*) *Hope* v. *Evered*, 17 Q. B. D. 338.

(*b*) *Clark* v. *Woods*, 17 L. J. N. S. (M. C.) 189. But see now 12 Vict. c. 14, s. 1, *post*, p. 268.

(*c*) *Crozier* v. *Cundy*, 6 B. & C. 232.

PROCEDURE.

Actions against police officers must arise either (1) where they have acted under a warrant or (2) of their own motion.

Under Warrant.

Protection. *Under warrant.*

By 24 Geo. 2, c. 44, s. 6, "No action shall be brought against any constable or other officer or against any person acting by his order or in his aid for anything done in obedience to any warrant under the hand and seal of any justice until demand has been made or left at his usual place of abode by the party intending to bring the action, or his attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after demand. In case after demand and compliance therewith, any action shall be brought against such constable, officer, or person acting in his aid without making the justice a defendant, the jury shall on production and proof of the warrant at the trial give their verdict for the defendant notwithstanding any defect of jurisdiction in such justice, and if the action is brought jointly against the justice and constable or officer, &c., then on proof of the warrant the jury shall find for such constable or officer, notwithstanding such defect of jurisdiction."

This statute extends only to actions of tort, and therefore where an action for money had and received was brought against an officer who had levied money on a conviction by a justice of the peace, the conviction having

been quashed, it was holden that a demand of a copy of the warrant was unnecessary. (*a*)

"The officer in order to be entitled to the protection must shew that in doing what he did he acted in obedience to the warrant: for if he exceeds his authority or acts without a warrant, or arrests a person not named in the warrant, he is not entitled to the benefit of the statute." (*b*)

The mere fact of the justice being sued jointly with the constable does not entitle the latter to a verdict, the last clause only applying to actions brought after the demand, perusal and copy of the warrant has been complied with by the constable. (*c*)

Whenever the officer has acted in obedience to the warrant he secures his indemnity by complying with the requirements of the statute, although the warrant may be illegal or improper, or may have been granted by a magistrate who had no jurisdiction or power to grant it. (*d*) But if the officer loses the protection of the statute he must justify under the justice's warrant. (*e*)

Queen's Bench warrants.

The statute does not apply to warrants of the Court of Queen's Bench. When such a warrant was executed by a constable to whom it was not directed out of his own district: it was held, in an action of trespass against the constable, that the plaintiff was not bound to demand a perusal and copy of the warrant. (*f*)

Statute held to apply.

A constable executing a warrant of a justice of the

(*a*) *Green* v. *Rowan*, 7 C. & P. 48 (n.).
(*b*) *Bell* v. *Oakley*, 2 M. & S. 259.
(*c*) *Clark* v. *Woods*, 17 L. J. N. S. (M. C.) 189.
(*d*) *Atkins* v. *Kilby*, 11 Ad. & E. 784, and *Price* v. *Messenger*, 2 B. & P. 158.
(*e*) *Read* v. *Coker*, 13 C. B. 859.
(*f*) *Gladwell* v. *Blake*, 1 C. M. & R. 636.

peace and sued in trespass without the magistrate was held to be within the statute, and entitled to a verdict on proof of such warrant, having first complied with plaintiff's demand of a perusal and copy of the warrant before action brought, though not within six days after such demand, as the Act prescribes. (*a*)

Where a constable acting under a warrant commanding him to take the goods of A. took the goods of B. believing them to be those of A.: it was held, that he was entitled to the protection of the statute. (*b*)

A constable who pleads that he is doing his duty is within the statute, and it is not a question for the jury whether the facts were such as might reasonably lead him to think he was acting in discharge of his duty. (*c*)

Where magistrates without authority order the suspension of the execution of a distress warrant duly issued, and the officer afterwards executes such warrant, he is entitled to the benefit of the statute. (*d*)

Statute held not to apply.

A constable who delivers a copy of his warrant to the party grieved cannot thereby discharge himself unless the party has thereby a right of action (supposing the warrant illegal) against the magistrate under whom he acts. (*e*)

It is not necessary to demand a perusal and copy of a warrant in a case where there is no remedy against the magistrate. (*f*) Nor where no action would have laid against the party issuing the warrant. (*g*)

Where a constable having a warrant authorizing the

(*a*) *Jones* v. *Vaughan*, 5 East, 445.

(*b*) *Parton* v. *Williams*, 3 B. & A. 330.

(*c*) *Gosden* v. *Elphick*, 4 Ex. 445.

(*d*) *Barrons* v. *Luscombe*, 5 N. & M. 330.

(*e*) *Sly* v. *Stevenson*, 2 C. & P. 464.

(*f*) *Cotton* v. *Radwell*, 2 N. & M. 399.

(*g*) *Sturch* v. *Clarke*, 1 N. & M. 671.

seizure of certain specified things alleged to have been stolen, seized other goods not so specified, and the latter goods were not likely to furnish evidence of the identity of the former: it was held that he was liable in an action of trespass, though a copy of the warrant had not been demanded of him. (*a*)

In trespass against a constable for taking the plaintiff on a charge of felony under a warrant which described him by a wrong Christian name: it was held, that the warrant afforded no protection to the defendant, although the plaintiff was the person really intended to be taken, and that the plaintiff was entitled to recover without having demanded a perusal and copy of the warrant. (*b*)

Where defendants, in order to levy a poor-rate under a warrant of distress granted by two magistrates, broke and entered a house and broke the windows: it was held that they might be sued in trespass without a previous demand of perusal and copy of the warrant. (*c*)

What a good demand.

A demand signed by the plaintiff, his attorney or agent, and served or left by any other person, is good. (*d*)

Where a demand required the perusal and copy to be given within three days, it was held that this was a sufficient demand to entitle the party to sue, although the statute says that no action shall be brought until the perusal and copy shall have been refused for six days after demand. (*e*)

(*a*) *Crozier* v. *Cundy*, 9 D. & R. 224.

(*b*) *Haye* v. *Bush* 2 Scott, N. R. 86.

(*c*) *Bell* v. *Oakley*, 2 M. & S. 259.

(*d*) *Clark* v. *Woods*, 3 New Sess. Cas. 213.

(*e*) *Collins* v. *Rose*, 5 M. & W. 194.

Without Warrant.

Without warrant.

Where police officers act without warrant, certain special protection is afforded to them by different statutes.

Generally.

By 7 Jac. 1, c. 5, "If any action upon the case, trespass, battery, or false imprisonment shall be brought against constables, their deputies or assistants, for or concerning any matter by them done by virtue of their offices, the said action shall be laid within the county where the trespass or fact shall be done or committed, and not elsewhere; and that it shall be lawful for such constables, &c., to plead the general issue not guilty, and to give any special matter discharging them from liability in evidence to the jury; and that if upon the trial of any such action the plaintiff shall not prove to the jury that the trespass, battery, imprisonment, or other fact or cause of action was committed or done within the county wherein the action shall be laid, the jury shall find the defendant not guilty, without regard to any evidence on the merits." (*a*)

Coin offences.

By 24 & 25 Vict. c. 99, s. 33, "All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise, and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action, and in any such action the defendant may plead

Venue limitation.

Notice.

(*a*) See also 21 Jac. 1, c. 12, s. 5.

the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant, and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuited or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, in every such case the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases, and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action."

General issue.

Amends.

Costs.

By 12 & 13 Vict. c. 92, s. 27, "No action shall be brought against any justice of the peace or other person for anything done in pursuance or under the authority of this Act, unless such action shall be commenced within two calendar months next after the fact committed, and no such action shall be commenced until one calendar month at least after a notice in writing of such intended action shall have been delivered to the defendant, or left for him at his usual place of abode by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the parties so intending to sue, and also the name and place of abode, or of business, of the said attorney or agent, if

Cruelty to animals.

Limitation.

Notice.

such notice has been served by such attorney or agent;
Venue. and in every such action the venue shall be laid in the county where the act complained of was committed, or in action in the County Court the action shall be brought in the Court within the jurisdiction of which the act complained of was committed; and the defendant in
General issue. such action shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse, or justification in evidence under such plea at the trial of such action, and in every such case after notice of action shall be given as aforesaid, and before such action shall be commenced, the defendant to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of
Amends. money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender,
Payment into Court. shall be at liberty to pay into Court such sum of money as he may think fit; and which said tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if it shall be found at the trial that the plaintiff is not entitled to damages beyond
Verdict. the sums so tendered and paid into Court, the defendant shall be entitled to a verdict, and the plaintiff shall not be at liberty to elect to be nonsuited, and the sum of money, if any, so paid into Court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs on that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff; or if where money is so paid into Court in any such action the plaintiff shall elect to accept the same in satisfaction

of his damages in the said action, he may obtain from any judge of the Court in which such action shall be brought an order that such money shall be paid out of Court to him, and that the defendant shall pay him his costs to be taxed; and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause." Costs.

S. 28. "If at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or when such plaintiff shall sue in the County Court within the district for which such Court is holden, then, and in every such case, such plaintiff shall be nonsuited, or the defendant shall be entitled to a verdict; and the defendant shall in all cases where he shall obtain judgment upon verdict or otherwise be entitled to his full costs in that behalf, to be taxed as between attorney and client." Evidence. Costs.

By 8 & 9 Vict. c. 109, s. 22, "No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding before such action brought, and in case no tender shall have been made, it shall be lawful for the defendant in any such action, by leave of the *Gaming* Amends

Payment into Court. Court where such action shall depend, at any time before issue joined to pay into Court such sum of money as he shall think fit: whereupon such proceeding, order, and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court."

S. 23. "No action, suit, or information, or any other proceeding of what nature soever, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, or in the execution of the author-
Notice. ities under this Act, unless notice in writing shall be given by the party intending to prosecute such suit, information, or other proceeding to the intended defendant one calendar month at least before prosecuting the same, nor unless such action, suit, information, or other
Limitation. proceeding shall be brought or commenced within three calendar months next after the act or omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased."

Injury to property. By 24 & 25 Vict. c. 97, s. 71, the same protection is afforded as by c. 99, s. 33, *supra*. (*a*)

Meetings. 57 Geo. 3, c. 19, s. 32—which statute refers to public meetings—contains a similar protective enactment to the one last cited.

Vagrants. By 5 Geo. 4, c. 83, s. 18, "In all cases where an action shall be brought against any .... constable or other person for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this Act, such . . . constable or other person, if he shall have judgment in his favour,
Costs. shall have treble costs awarded to him by the Court,

(*a*) P. 206.

unless the judge shall certify that there was a reasonable cause for such action." (*a*)

Limitation.

S. 19. "Every such action shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards, and if any person or persons shall be sued for any matter or thing which he, she, or they shall have done in the execution of this Act he, she, or they may plead the general issue and give the special matter in evidence."

General issue.

Warrants for recovery of tenements.

Where constables execute warrants for recovery of tenements "no action or prosecution shall be brought" against them "for executing the same by reason that the person on whose application the same shall be granted had not lawful right to the possession of the premises." (*b*)

Canals and Rivers.

Canals and Rivers. Police.

By 3 & 4 Vict. c. 50, s. 18, "All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed and not otherwise, and notice in writing of such cause of action shall be given to the defendant one calendar month at the least before the commencement of the action, and in any such action the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money

Venue.

Limitation.

Notice.

General issue.

Amends.

(*a*) Treble costs are abolished by 5 & 6 Vict. c. 97, s. 2.

(*b*) 1 & 2 Vict. c. 74, s. 5.

Payment into Court.

shall have been paid into Court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full

Costs

costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases, and though a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant unless the judge before whom the trial is had shall certify his approbation of the action and of the verdict obtained thereupon."

Excise and Customs.

Excise and customs.

Where constables act under excise or customs statutes they are protected as fully as those officers. See *ante*, Part III. (*a*)

Metropolitan.

Betting.

Metropolis management.

By 16 & 17 Vict. c. 119, s. 16, the defendant is permitted to tender amends, and by s. 17 actions and prosecutions must be commenced within six months. Tender of amends is also conferred by 18 & 19 Vict. c. 120, s. 224.

As to the general tenour and effect of these protective enactments, see *post*, Part VII. (*b*).

(*a*) P. 123 *et seq.*
(*b*) P. 301 *et seq.*

Evidence.

Evidence.

Trespass was brought against three defendants for an assault committed in Bristol. Two of them were constables of Oxford who had come down and taken plaintiff at Bristol (thus committing an assault) on suspicion of having stolen a horse belonging to the other defendant in Oxfordshire. The declaration stated the trespass to have been done *without reasonable or probable cause.* The two constables pleaded not guilty only: *Held,* that they might give the special matter in evidence in mitigation of damages, to shew that there was reasonable and probable cause. But *semble,* having acted out of their jurisdiction they were not entitled as constables, under 21 Jac. 1, c. 12, s. 5, to give the special matter in evidence under the general issue as a defence of the trespasses. (*a*)

In order to maintain an action against the Commissioners of Police for money detained by an officer after the trial of a prisoner, it must be distinctly shewn that it was accounted for by the officer to the commissioners. (*b*)

Where information is obtained from a constable he is bound to state in cross-examination, if required to do so, the circumstances under which he had seen the facts to which he testified. (*c*)

A conviction on a statute on the face of it not pursuing the previous statute, nor shewing that any offence has been committed, is bad, and although it has not been

(*a*) *Rowcliffe* v. *Murray*, 1 Car. & M. 513.
(*b*) *Green* v. *Rowan*, 7 C. & P. 48.
(*c*) *Webb* v. *Catchlove*, 82 L. T. (N.) 103.

quashed its invalidity may be taken advantage of on the trial of an action of trespass for a distress taken under a warrant grounded upon it. (*a*)

In an action in the County Court against constables for a tort in taking the plaintiff into custody on a false and unfounded charge of furiously driving a horse and gig to the danger of the passengers in a public highway, the plaintiff in stating his case admitted that he "had been taken before two justices, convicted, and fined twenty shillings, and that he had to pay the penalty and had not taken any steps to impeach the validity of the conviction." The judge thereupon asked the defendants if they proved the conviction, and they accordingly put in an examined copy which stated the offence, but did not allege that it was committed "within view of the constable." The judge being of opinion that, under the circumstances, the conviction was an answer to the plaintiff's claim for damages, directed the jury to find for the defendants: *Held*, a misdirection. (*b*)

Two informations were laid against a party, one charging him with the rescue of a person out of lawful custody, and the other with an assault on two police constables. But on the party being brought up before the petty sessions the first of these informations was withdrawn: *Held*, that this was no valid ground of objection to the proceedings on the second information. (*c*)

Limitation.

Limitation. Where a constable, having a magistrate's warrant of distress to levy a church-rate under the statute 53 Geo. 3,

(*a*) *Gimbert* v. *Coyney*, M'Cl. & Y. 46.
(*b*) *Justice*, app., *Gosling*, resp., 12 C. B. 39.
(*c*) *Galliard*, app., *Laxton*, resp., 2 B. & S. 363.

c. 127, broke the door of and entered plaintiff's dwelling-house: it was held, that although he thereby exceeded his authority yet that no action could be maintained after the expiration of three calendar months. (*a*)

Action not having been brought within six months of the commission of the trespass: it was *held*, that the constable was protected under the 6th and 8th sects. of 24 Geo. 2, c. 44. (*b*)

Notice.

Notice. By 2 & 3 Vict. c. 47, s. 79, this Act is to be read as one with 10 Geo. 4, c. 44, s. 41 of which provides that notice of action must be given to all persons acting in execution of the Act. If therefore a person has reasonable grounds for believing that he is entitled to arrest a person found committing an act prohibited by this Act he is entitled to notice of action. (*c*)

Pleading.

Pleading. In an action of trespass for false imprisonment, a constable may justify under the general issue, though he acted without a warrant, provided there was a reasonable charge of felony made, although he afterwards discharged the prisoner without taking him before a magistrate, and although it should turn out in fact that no felony was committed. (*d*)

In trespass by A. against B. for false imprisonment, B. justified on the ground of A. having wilfully and without excuse, within *the view of the constable* who apprehended

(*a*) *Theobald* v. *Crichmore*, 1 B. & A. 227.
(*b*) *Freegard* v. *Barnes*, 7 Ex. 827.
(*c*) *Danvers* v. *Morgan*, 1 Jur. (N. S.) Ex. 1051.
(*d*) *McCloughan* v. *Clayton*, Holt, N. P. C. 478.

her, annoyed and disturbed the defendant and his family by knocking and ringing at his door: *Held*, that to support this plea under ss. 54 and 63 of 2 & 3 Vict. c. 47, it was necessary to prove the offence to have been committed within view of the constable. And that the plea afforded no justification under s. 66, inasmuch as it did not allege that A. was found committing the offence *at the time of apprehension*, or that B. was the *owner* of the property on or with respect to which the offence was committed. (*a*)

Where the defendant pleaded that the plaintiff illegally and irreverently made a disturbance in church, whereby the performance of divine service was interrupted and disturbed, whereupon the defendant gently laid hands upon him, took him out of the church, and detained him in custody until the service was over. It appearing in evidence that the alleged disturbance was in the plaintiff (an unauthorized person) having read aloud in church between the communion service and the sermon a notice of a vestry meeting: *Held*, that the plea was no answer to the action under 1 W. & M. c. 18, s. 18, for though the constable might turn the plaintiff out of the church yet he had no right to detain him in custody. (*b*)

The plaintiff was committed for trial, tried and acquitted on a charge of stealing a diamond pin and ring which were found in his possession. The defendant, a superintendent of police, into whose possession the pin and ring had lawfully come in the course of the criminal proceedings, did not deliver them to the plaintiff on his acquittal, but within a reasonable time afterwards applied to a magistrate under 2 & 3 Vict. c. 71, s. 29 for an

(*a*) *Simmons* v. *Milligen*, 2 C. B. 524.
(*b*) *Williams* v. *Glenister*, 4 D. & R. 217.

order. The magistrate, on the application being made, heard evidence, which was tendered both for the plaintiff and defendant, and adjourned the further hearing to a distant date. Before the expiration of that day the plaintiff brought his action against defendant for detention and costs. Defendant set out the above facts in his statement of defence, and that no order had yet been made by the magistrate. Plaintiff demurred: *Held*, affirming the decision of the Court below, that no order having been made by the magistrate under the section, plaintiff's action was not maintainable. (*a*)

Venue.

Venue. A constable who imprisons a person on suspicion of felony without any reasonable ground, on his own authority, without any warrant or charge from any other person, is within the statute 21 Jac. 1, c. 12, which requires the venue to be laid in the proper county. (*b*)

Damages.

Damages. Where a person was arrested on a bad warrant for arrears of poor-rate, the damages were held to be in an action of trespass the whole amount he had paid under protest on arrest. (*c*)

Execution.

Execution. A sum already accrued due to a retired constable in respect of his superannuation allowance under 11 & 12 Vict. c. 14, may be attached in execution. (*d*)

(*a*) *Bullock* v. *Dunlap*, 13 Cox, C. C. 581.
(*b*) *Staight* v. *Gee*, 2 Stark. 445.
(*c*) *Clark* v. *Woods*, 17 L. J. N. S. (M. C.) 189.
(*d*) *Booth* v. *Trail*, 12 Q. B. D. 8.

GAOLERS.

Duties.

The duty of gaolers is to detain prisoners during the period of their confinement and to discharge them at the expiration thereof.

First-class misdemeanant.

A person committed to prison, under 6 & 7 Vict. c. 73, s. 32, and 23 & 24 Vict. c. 127, s. 26, for acting as a solicitor though not duly qualified, is a "criminal prisoner" within 28 & 29 Vict. c. 126, s. 4, and is therefore not entitled to be treated as a first-class misdemeanant under 40 & 41 Vict. c. 21, s. 4. (*a*)

Removal of prisoners.

"A prisoner may be brought up for trial and may be removed by or under the direction of the gaoler from one prison to another, or from one place of confinement to another, to which such prisoner may be legally removed for the purpose of being tried or undergoing his sentence, and no prisoner whilst in the custody of a gaoler shall be deemed to have escaped, although he may be taken into different jurisdictions or different places of confinement." (*b*)

The Secretary of State is liable in trespass if a person be removed from one part of a prison to another in which he is not legally confined under a general order made by him for the classification of prisoners which he had no legal authority to make. (*c*)

Search.

Schedule I. 6. "Prisoners on admission to be searched, and all dangerous weapons, articles calculated to facilitate escape, and prohibited articles, to be taken from them." (*d*)

(*a*) *Osborne* v. *Millman*, 18 Q. B. D. 471.
(*b*) 28 & 29 Vict. c. 126, s. 63.
(*c*) *Cobbett* v. *Grey*, 4 Ex. 729.
(*d*) 28 & 29 Vict. c. 126.

7. "No prisoner shall be searched in the presence of any other prisoner."

By s. 20 the regulations of this schedule are made to be of the same effect as if contained in the body of the Act.

Discharge. Attachment.

In attachment and committal, if the term of imprisonment does not appear on the writ, application to the Court must be made for discharge. (*a*) But no application is necessary where the term does so appear. (*b*)

Where a defendant is in prison under an attachment for contempt for not putting in his answer, and is not brought before the Court within thirty days from the time of his being in custody, he will be discharged without payment of costs. (*c*)

Generally.

A person sentenced to imprisonment for the space of one calendar month, was held entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect. (*d*)

A prisoner, who at the time of the vesting order made by the Court of Insolvent Debtors on the petition of a creditor, was entitled to his discharge, on the ground of the lapse of a year without the plaintiffs having declared against him, was held entitled to his discharge, notwithstanding s. 41 of 1 & 2 Vict. c. 110. (*e*)

(*a*) *Nalty* v. *Aylett*, 30 L. T. N. S. 783; *Greaves* v. *Keene*, 4 Ex. D. 73.
(*b*) *Re Edwards*, 21 Ch. D. 230.
(*c*) *Fortescue* v. *Hallett*, 26 L. J. (Ch.) 711.
(*d*) *Migotti* v. *Colvill*, L. R. 4 C. P. D. 233.
(*e*) *Hallett* v. *Cresswell*, 3 D. & L. 561.

PROCEDURE.

Liability of officer.

The keeper of a prison who receives and detains one apprehended and charged in custody under a warrant, runs the risk of the warrant having been executed against the proper person: and though acting *bonâ fide* and with the means of ascertaining the identity of the individual named in the warrant, he is liable to an action of trespass and false imprisonment if by the mistake of the officer to whom it was directed it was executed against authority. (*a*)

M. was committed for a contempt of Court in not answering to a bill in Chancery. She was taken to gaol under a warrant addressed to the gaoler which shewed on the face of it the cause of her committal. The plaintiff in the suit did not bring her to the bar of the Court within thirty days, but the gaoler did not discharge her: *Held*, that duty was cast in express terms on the gaoler by 11 Geo. 4 & 1 Will. 4, c. 36, s. 15, to discharge the persons in custody under such circumstances, and as the warrant gave him notice he was bound to discharge M. after the lapse of thirty days without an order from the sheriff or the Court of Chancery, and that an action of trespass did lie against him for detaining her. (*b*)

Where the cause did not appear on the face of the order and the defendant complied with its terms, he was held not liable to action. (*c*)

A. being in the custody of the marshal of the King's

(*a*) *Aaron* v. *Alexander*, 3 Camp. 34.
(*b*) *Moone* v. *Rose*, L. R. 4 Q. B. 486.
(*c*) *Greaves* v. *Keene*, 4 Ex. D. 73.

Bench Prison, was brought up to the Court, upon an order of that Court, and charged with an attachment for contempt, upon which attachment he was afterwards detained in custody: *Held* (diss. Ld. Abinger, C.B.) that trespass was maintainable against the party who caused the order to be served on the marshal. (*a*)

Protection. "If any suit or action is prosecuted against any person for anything done in pursuance of this Act, such person may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done by authority of this Act; and if a verdict passes for the defendant or the plaintiff becomes nonsuited, or discontinues his action after issue joined, or if upon demurrer or otherwise judgment be given against a plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict be given for the plaintiff in any such action, the plaintiff shall not have costs against the defendant unless the judge before whom the trial takes place certifies his approbation of the action and of the verdict obtained thereupon." (*b*)

General issue.

Double costs.

Costs of plaintiff.

Limitation. "All actions, suits, and prosecutions commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county or place where the act complained of was committed, and shall be commenced within six calendar months after the committal thereof, and not otherwise." (*c*)

Venue.

Privileges of gaolers. "Every prison officer, while acting as such, shall, by virtue of his appointment, and without being sworn in

(*a*) *Bryant* v. *Clutton*, 1 M. & W. 408.
(*b*) 28 & 29 Vict. c. 126, s. 49. (*c*) S. 50.

before any justice, be deemed to be a constable, and to have all such powers, authorities, protection, and privileges for the purpose of the execution of his duty as a prison officer, as any constable duly appointed has within his constablewick, by common law, statute or custom." (*a*)

Evidence. A. was to be tried for felony at the assizes for the county of W., and B., a material witness for A., was committed to the W. city prison for further examination on a charge of felony: *Held*, that before the trial of A. the governor of the city prison ought to allow A.'s attorney to see B. in his presence. (*b*)

Justification. Justification under process of the University of Oxford was held ill, and when those who might justify join those who have not a justification it is bad as to all. (*c*)

Pleading. In trespass for assaulting the plaintiff and compelling him to go to the Arches Court, the plea was, that the defendant was keeper of the Queen's Prison, and the plaintiff a prisoner there. That a writ of *habeas corpus* issued commanding the defendant to have the body of the plaintiff at the Arches Court—that the plaintiff refused to go—wherefore defendant compelled him: &c. Replication, that the writ issued at the instance of the plaintiff and no other person, as the defendant well knew, and that plaintiff gave notice to the defendant not to execute it. Rejoinder: That the defendant did not know that the writ issued at the instance of the plaintiff and no other person. Issue. *Held*, that this issue was not supported by the evidence that the plaintiff's agent informed a person who was clerk of the papers and deputy-keeper

(*a*) Sched. I. s. 6.

(*b*) *R.* v. *Simmonds*, 7 C. & P. 176.

(*c*) *Smith* v. *Bourchier*, 2 Str. 993. *Sed. qu. vide Parkins* v. *Proctor*, 2 Wils. 385.

of the prison that the writ was issued by the plaintiff and that he was not to be taken before the Arches Court, the writ itself not containing on the face of it the name of the party at whose instance it was sued out. (*a*)

(*a*) *Hemming* v. *Hudson*, 3 Ex. 107.

PART V.

A.—*OFFICERS OF THE PRIVY COUNCIL.*

Contagious Diseases (Animals) Inspectors.

Contagious diseases (animals) inspectors.

Powers.

The powers of the contagious diseases (animals) inspectors are as follows:—

(1) "An inspector shall have for the purposes of this Act all powers which a constable has under this Act or otherwise in the place where the inspector is acting." (*a*)

(2) "An inspector may at any time enter any land, or dairy, or cow-shed to which this Act applies, or milk-stores, or milk-shop, or other building or place wherein he has reasonable grounds for supposing—

(*a.*) That disease exists, or has within fifty-six days existed; or

(*b.*) That the carcase of a diseased or suspected animal is or has been kept, or has been buried, destroyed, or otherwise disposed of; or

(*c.*) That there is to be found any pen, place, vehicle, or thing in respect whereof any person has on any occasion failed to comply with the provisions of this Act, or of an Order of Council (*b*), or of a regulation of a local authority; or

(*d.*) That this Act or an Order of Council, or a

(*a*) See p. 144.

(*b*) Proclamations under Orders in Council "have a binding force, as they are grounded upon and enforce the laws of the realm."—Co. Litt. 139. They may, however, be reviewed by the Court: see *Foster* v. *Dodd*, L. R. 3 Q. B. 67.

regulation of a local authority has not been, or is not being complied with."

(4) "An inspector entering, as in this section authorized, shall if required by the owner or occupier or person in charge of the land, building, place, pen, vehicle, vessel, or boat, state in writing his reasons for entering."

(5) "An inspector of the Privy Council shall have all the powers of an inspector throughout England, or that part thereof for which he is appointed." (*a*) Inspector of Privy Council.

S. 52 (1). "Where an inspector of the Privy Council is satisfied that this Act, or an Order of Council, or a regulation of a local authority has not been, or is not being complied with on board a vessel in a port, then, on the representation in writing to that effect of the inspector stating particulars of non-compliance, the vessel may be detained until the Privy Council otherwise direct.

"(2) The officer detaining the vessel shall forthwith deliver to the master, or person in charge of the vessel, a copy of the representation."

S. 55 (1). "An action, prosecution, or proceeding against a local authority, or an inspector or officer of the Privy Council, or of a local authority, or any person for any act done in pursuance or execution or intended execution of this Act or of an Order of Council or regulation of a local authority, or in respect of any alleged neglect or default in the execution of this Act or of such order or regulation, shall not lie or be instituted, unless it is commenced within four months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage within four months next after the ceasing thereof. Protection.

(*a*) 41 & 42 Vict. c. 74, s. 51.

"(2) In any such action tender of amends before the action was commenced may in lieu of or in addition to any other plea be pleaded. If the action was commenced after such tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action."

B.—*OFFICERS OF THE HOME DEPARTMENT.*

Burial Grounds Inspectors.

The power of burial grounds inspectors is the following:—

Burial inspectors.

"It shall be lawful for one of Her Majesty's Principal Secretaries of State from time to time to appoint and authorize any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereunto have been made or may be made by the Secretary of State under the said Acts or any of them, to ascertain whether such regulations have been observed and complied with." (*a*)

As to the force and effect of these regulations *see* Bye-Laws. (*b*)

(*a*) 18 & 19 Vict. c. 128, s. 8.. (*b*) *Post*, p. 290.

CRUELTY TO ANIMALS ACT INSPECTORS.

The power of these inspectors is as follows :—

Cruelty to Animals Ac inspectors.

"The Secretary of State shall cause all registered places to be from time to time visited by inspectors for the purpose of securing a compliance with the provisions of this Act, and the Secretary of State may, with the assent of the Treasury as to number, appoint any special inspectors, or may from time to time assign the duties of any such inspectors to such officers in the employment of the Government who may be willing to accept the same as he may think fit, either permanently or temporarily." (*a*)

This Act relates to vivisection and prohibits the performance of painful experiments on living animals except subject to the restrictions specified in s. 3 of the Act.

(*a*) 39 & 40 Vict. c. 77, s. 10.

Explosives Inspectors.

Explosives inspectors.

The powers of inspectors of explosives are contained in 23 & 24 Vict. c. 139, and 38 & 39 Vict. c. 55.

Gunpowder works.

"It shall be lawful for one of Her Majesty's Principal Secretaries of State to authorize from time to time such persons as he may see fit to inspect and examine any mill, magazine, or place in which gunpowder, ammunition, fireworks, fulminating mercury, or any other explosive preparation or composition is manufactured or kept, or supposed to be manufactured or kept, or loaded percussion caps are made, or supposed so to be, in order to see whether or not regulations of this Act concerning the manufacture and keeping of gunpowder and such other matters as aforesaid, and concerning the making of loaded percussion caps, are complied with, and to report to such Secretary of State thereon; and any person so authorized shall have authority to enter, inspect, and examine any such mill, magazine, or place at all reasonable times in the daytime without any previous notice for the purpose." (*a*)

River Thames.

"The Conservators of the River Thames for the time being shall from time to time appoint one or more of the harbour-masters of the port of London, or other person or persons, a searcher or searchers for unlawful quantities of gunpowder in ships or other vessels in the River Thames, which person or persons so appointed are hereby authorized at any time between sunrising and sunsetting to enter any ship or vessel (except Her

(*a*) 23 & 24 Vict. c. 139, s. 17.

Majesty's ships) in the River Thames above Blackwall, and to search the same for unlawful quantities of gunpowder, and also shall have the same powers of seizing, removing to proper places, and detaining all such unlawful quantities of gunpowder found on board any such ship or vessel, and the barrels or other receptacles in which such gunpowder shall be as are hereafter given to persons searching for unlawful quantities of gunpowder under a warrant of a justice of peace." (*a*)

General powers.

By 38 & 39 Vict. c. 17, s. 55: "A Government inspector shall have power to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose:

Entry.

(1.) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times, by day and night, but so as not unnecessarily to impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act, and all matters and things relating to the safety of the public, or of the persons employed in or about such factory, magazine, or store.

(2.) He may enter, inspect, and examine any premises registered under this Act, and every part thereof in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day.

Take samples.

(3.) He may require the occupier of any factory, magazine, store, or premises which he is entitled under this section to enter, or a person employed by such occupier therein, to give

(*a*) *Ib.* s. 27.

him samples of any explosive or ingredients of any explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which the inspector believes to be an explosive, or such ingredients or substance."

Entry in cases of emergency.

S. 73. "Where any of the following officers—viz., any Government inspector, or any constable, or any officer of the local authority, if such constable or officer is specially authorized, either (A) by a warrant of a justice (which warrant such justice may grant upon reasonable grounds being assigned on oath), or (B) (where it appears to a superintendent or other officer of police of equal or superior rank, or to a Government inspector, that the case is one of emergency, and that the delay in obtaining a warrant would be likely to endanger life), by a written order from such superintendent officer or inspector—has reasonable cause to believe that any offence has been or is being committed with respect to any explosive in any place (whether a building or not, a carriage, boat, or ship) or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may, on producing, if demanded in the case of a Government inspector, a copy of his appointment, and in the case of any other officer his authority, enter at any time, and if needs be by force, and as well on Sundays as on other days, the said place and every part thereof, and examine the same and search for explosives therein, and take samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein."

Seizure and detention.

S. 74. "When any of the following officers—namely, any government inspector, or any constable, or any officer of the local authority—has reasonable cause to believe that any explosive or ingredient of an explosive, or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some Court of summary jurisdiction has determined whether the same is or is not liable to be forfeited, and with respect thereto the following provisions shall have effect:

(1.) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat, or ship) to detain the same in such place, or in any place under the control of such occupier, or may remove it in such manner and to such place as will, in his opinion, least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent and fraught with serious public danger, and he is a Government inspector, or is authorized by an order from a Government inspector or justice of the peace, or from a superintendent, or other officer of police of equal or superior rank, cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same, he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive or having the same under his control at the time of the seizure.

(3.) The receptacles containing the same may be

seized, detained, and removed in like manner as the contents thereof; and

(4.) The officers seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts, and accoutrements belonging to or drawing, or provided for drawing such ship, boat, or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined in case of dispute by a Court of summary jurisdiction, and to be recovered in like manner as penalties under this Act; and

(5.) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident; but the person seizing, removing, detaining, keeping, or conveying same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages for keeping or conveying the same, so that he use all due precautions as aforesaid.

(6.) The officers seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without reasonable cause, or that he caused damage to the article seized by some wilful neglect or default."

S. 75. "Any of the following officers—namely, any Entry of wharves, ships, &c.

Government inspector under this Act, any chief officer of police, and any superior officer appointed for the purposes of this Act, where the justices in petty sessions are the local authority, by the Court of quarter sessions to which such justices belong, and in the case of any other local authority, by the local authority itself—may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect, and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory, magazine, or store, or of the importer of any explosive on or in which wharf, carriage, ship, or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier, or importer.

"Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive in such manner, and with such precautions, as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive as if it were liable to forfeiture.

"Any officer above mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of

emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop and enter, inspect and examine such carriage or boat, and by detention or removal thereof, or otherwise, take such precautions as may be reasonably necessary for removing such danger in like manner as if such explosive were liable to forfeiture.

"Every officer shall, for the purpose of this section, have the same powers, and be in the same position, as if he were authorized by a search warrant granted under this Act."

Removal of unauthorized persons.

S. 77. "Any person who enters without permission, or otherwise trespasses upon any factory, magazine, or store, or land immediately adjoining thereto which is occupied by the occupier of such factory, magazine, or store, or on any wharf for which bye-laws are made by the occupier thereof under this Act . . . may be forthwith removed from such factory, magazine, store, land, or wharf by any constable."

Power to arrest.

S. 78. "Any person who is found committing any act for which he is liable to a penalty under this Act, and which tends to cause explosion or fire in or about any factory, magazine, store, railway, canal, harbour, or wharf, or any carriage, ship, or boat, may be apprehended without a warrant by a constable or an officer of the local authority . . . and be removed from the place at which he is arrested and conveyed as soon as conveniently may be before a Court of summary jurisdiction."

The offences against this Act are:—

S. 4. Manufacture at unauthorized place.

S. 5. Keeping on unauthorized place.

S. 9. Carrying on factory contrary to licence (except using, in case of emergency or temporarily,

one part of a building for another process of manufacture).

S. 10. (1) Factory to be kept for that purpose only.
(2) Fittings of danger buildings to be covered.
(3) Lightning conductor, unless considered unnecessary.
(4) Taking articles liable to spontaneous ignition into danger, except for immediate use.
(5) Repairs not to be done in danger building until room cleansed.
(6) Notice outside danger building of quantity of ingredients allowed, and copy of rules.
(7) Tools to be wood or copper, and covered.
(8) Suitable working clothes to be provided.
(9) No smoking, except in part allowed.
(10) Vehicles for conveyance to have no exposed iron or steel.
(11) Person under 16 not to be employed except under supervision of adult.
(12) Ingredients, when process complete, to be removed to magazine.
(13) To be sifted before use.

Stores.

S. 17. (1) Provisions of Order in Council to be observed.
(2) Amount not to exceed that on licence.
(3) As 10 (1); (4) as 10 (2); (5) as 10 (3), except less than 1000 lbs.; (6) as 10 (5); (7) as 10 (7); (8) as 10 (8); (9) as 10 (9); (10) as 10 (11).

Retail.

S. 22. (1) To be in house or safe; latter to be safe distance from highway.

(2) Amount. Detached safe, 200 lbs.
„ In dwelling-house, 50 lbs.
„ In safe in dwelling-house, 100 lbs.
(3) Explosive articles not to be kept in or near.
(4) No exposed iron or steel in interior of receptacle.
(5) More than 1 lb. to be in can or bag.

S. 23. All precautions to be taken to prevent fire or explosion, and prevent unauthorized persons having access.

S. 30. Hawking on highway.

S. 31. Selling to children under 13.

S. 32. Sale to be in closed packages, labelled.

S. 33. *Packing and Conveyance.*
(1) Not exceeding 5 lbs. in case.
(2) Exceeding 5lbs., if single, box to be approved; if double, inner to be a case approved.
(3) Interior to be free from grit.
(4) Not used for any other purpose.
(5) No iron or steel unless covered.
(6) Not to exceed 100 lbs.
(7) To be branded.

S. 43. Manufacturing prohibited articles.

S. 46. *Gunmakers.*
(1) In filling room not more than 5 lbs., except in safety cartridges.
(2) No other work to be carried on.
(3) No fire or artificial light unless protected.
(4) Room to be detached from magazine.
(5) Notice of intention to use as filling room.

S. 47. *Mines and Quarries.*
(1) Not more than prescribed amount.
(2) As 46 (2); (3) as 46 (4).

(4) One kind not to be made into another, nor resolved into its ingredients.

(5) As 46 (5).

S. 55. Failing to admit Government inspector.

S. 56. ———— give notice of dangerous practices.

S. 63. ———————————— accidents.

S. 64. Reconstructing buildings destroyed by accident without consent of Secretary of State.

S. 69. Obstructing officers of local authority.

S. 80. Throwing fireworks in public thoroughfare.

S. 81. Forging licences.

S. 82. Defacing notices.

Factory Inspectors.

Factory inspectors.

The powers of a factory inspector are conferred by 41 & 42 Vict. c. 16, as amended by 46 & 47 Vict. c. 53.

Powers.

"An inspector under this Act shall for the purpose of this Act have power to do all or any of the following things—namely:—

1. To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and
2. To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and
3. To require the production of the registers, certificates, notices and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and
4. To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and
5. To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

6. To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory, or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be, or to have been within the two preceding months, employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and
7. To exercise such other powers as may be necessary for carrying into effect this Act." (*a*)

S. 69. "An inspector before entering, in pursuance of the powers conferred by this Act, without the consent of the occupier, any room or place actually used as a dwelling as well as for a factory or workshop, shall on affidavit or statutory declaration of facts and reasons, obtain written authority so to do from a Secretary of State or a warrant from a justice of the peace."

S. 70. "Every inspector under this Act shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop, shall, if required, produce to the occupier the said certificate."

Bake-houses.

The inspector is not to exercise the powers as to retail bakehouses contained in the principal Act (above cited) unless he has notice or reasonable cause to believe that a child, young person or woman is employed therein. (*b*)

(*a*) 41 & 42 Vict. c. 16, s. 68.
(*b*) 46 & 47 Vict. c. 53, s. 17 (3), and see *post*, p. 289.

Habitual Drunkards Act Inspector.

By 42 & 43 Vict. c. 19, s. 15, every retreat established under this Act "shall from time to time and at least twice each year be inspected by the inspector or assistant inspector of retreats."

By s. 17 Secretary of State may make rules for the management of a retreat, "and any person who contravenes or fails to comply with any of such rules" "shall be deemed to be guilty of an offence against this Act."

MINES INSPECTORS.

Mines inspectors. Powers

The power of an inspector of mines is as follows :—

An inspector under this Act shall have power to do all or any of the following things : namely—

(1.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine.

(2.) To enter, inspect, and examine any mine, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the mine.

(3.) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto, or the care and treatment of the horses and other animals used in the mine.

(4.) To exercise such other powers as may be necessary for carrying this Act into effect." (*a*)

(*a*) 50 & 51 Vict. c. 58, s. 41. 35 & 36 Vict. c. 77, s. 17, is to the like effect, which Act refers to metalliferous mines. An inspector under this Act may exercise the powers under the former Act if directed so as to do by a Secretary of State—50 & 51 Vict. c. 58, s. 39 (4).

C.—*OFFICERS OF THE BOARD OF TRADE.*

Alkali Works Inspectors.

Alkali works inspectors. Powers.

The powers are as follows:—

"For the purpose of the execution of this Act an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter and inspect any work to which this Act applies and examine any process causing the evolution of any noxious or offensive gas and any apparatus for condensing any such gas or otherwise preventing the discharge thereof into the atmosphere or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere condensed or otherwise dealt with, and may enter and inspect any place where alkaline waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste, and generally may inquire into all matters and processes which tend to shew compliance or non-compliance with such of the provisions of this Act as are for the time being applicable to the works or place entered, or which seem necessary or proper for the execution of his duties under this Act.

"An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any

experiments he may think proper for the purpose of the execution of his duties under this Act." (*a*)

"The owner of any work to which this Act applies shall on the demand of the chief inspector furnish him within a reasonable time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere or for rendering any such gas harmless or inoffensive when discharged, is carried on.

"The owner of every such work and his agents shall render to every inspector all necessary facilities for an entry, inspection, examination, and testing in pursuance of this Act." (*b*)

(*a*) 44 & 45 Vict. c 37, s. 16. (*b*) S. 17.

Merchant Shipping Inspectors.

Receivers, surveyors and detaining officers are dealt with under this head.

Merchant shipping inspectors.

"Every officer of the Board of Trade, and every commanding officer of any of Her Majesty's ships on full pay, and every British consular officer, and the registrar general of seamen and his assistant, and every chief officer of customs in any place in Her Majesty's dominions, and every shipping master may, in cases where he has reason to suspect that the provisions of this Act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers, that is to say :—

Require production of log-books.

He may require the owner, master, or any of the crew of any British ship to produce any official log-books, or other documents relating to such crew or any number thereof, in their respective possession or control.

List of persons on board.

He may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books or documents, or of any part thereof.

Muster crew.

He may muster the crew of any such ship.

Master to answer questions.

He may summon the master to appear and give any explanation concerning such ship or her crew, or the said official log-books, or documents." (*a*)

S. 15. "Every such inspector as aforesaid (*b*) shall have the following powers; that is to say :—

(*a*) 17 & 18 Vict. c. 104, s. 13.

(*b*) Appointed by Board of Trade under s. 14 to report (1) as to accidents to vessels; (2) whether the Act is complied with; (3) whether the hull and machinery of steamships are sufficient and in good condition.

Board ship.

(1.) He may go on board any ship and may inspect the same, or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage.

Enter premises.

(2.) He may enter and inspect any premises, the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make.

Require attendance of persons.

(3.) He may by summons under his hand require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make.

Production of books, &c.

(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose.

Administer oaths.

(5.) He may administer oaths."

Receiver.

S. 441. "Whenever any ship or boat is stranded or in distress at any place on the shore of the sea, or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof . . . but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master."

S. 442. "The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo and apparel, do the following things; that is to say:—

Summon assistance.

(1.) Summon such number of men as he thinks necessary to assist him.

Require master of ship near to lend aid.

(2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his own ship or boats as may be in his power.

Demand use of vehicles, &c., near.

(3.) Demand the use of any wagon, cart, or horses that may be near at hand."

Arrest of plunderers.

S. 444. "Whenever any such accident as aforesaid occurs to any ship, or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force, and if any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or other person shall be free and fully indemnified as well as against the Queen's Majesty, Her heirs and successors, and others as against all persons so killed, maimed, or hurt."

Detention of ship or wreck in case of salvage.

S. 468. "Whenever any salvage is due to any person under this Act, the receiver shall act as follows (that is to say):—

(1.) If the same is due in respect of services rendered in assisting any ship or boat or in saving the lives of persons belonging to the same or the cargo or apparel thereof.

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made or process has been issued by some competent Court for the detention of such ship, boat, cargo, or apparel.

(2.) If the same is due in respect of the saving of any wreck and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained.

He shall detain such wreck until payment is made or process has been issued in manner aforesaid.

"But it shall be lawful for the receiver if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid."

Sale in certain cases.

S. 469. "Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then in the following cases (that is to say):—

(1.) In cases where the amount is not disputed, and the payment thereof is not made within twenty days after the same has become due.

(2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred and payment thereof is not made within twenty days after the decision of such first tribunal.

(3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days

as last aforesaid or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal, are not instituted within such twenty days.

The receiver may forthwith sell such ship, boat, cargo, apparel or wreck or a sufficient part thereof, and out of the proceeds of the sale after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold or other the parties entitled to receive the same."

Inspection of lights and signals.

By 25 & 26 Vict. c. 63, s. 30 (1): "The surveyors appointed under the third part of the principal (*i.e.*, the above recited) Act, or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said regulations, and shall for that purpose have the powers given to inspectors by the 15th section of the principal Act."

Explosives.

By 38 & 39 Vict. c. 17, s. 58, Marine Department inspectors are to exercise the powers under this Act in harbours. For powers, see p. 230 *et seq.*, *ante*.

Detaining officer. Provisional detention of defective ship.

And by 39 & 40 Vict. c. 80, s. 6, "Where a British ship being in any port of the United Kingdom is by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereunder referred

to as 'unsafe') may be provisionally detained for the purpose of being surveyed, and either finally detained or released as follows:—

(2.) When a ship has been provisionally detained there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board.

(4.) Before the order for final detention is made a copy of the report shall be served upon the master of the ship.

(5.) Where a ship has been provisionally detained the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors from the Court of Survey (nominated as hereinafter mentioned), and in such case if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ the Board of Trade may act as if the requisition had not been made.

(9.) Any officer so appointed (in this Act referred to as a detaining officer) shall have the same power as the Board of Trade have under this section of peremptorily ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her."

S. 12 (1). "A detaining officer shall have for the purpose of his duties under this Act the same powers as an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854." (*a*)

(4) "For the purposes of a survey of a ship under this Act any person authorized to make the same may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Extent of survey.

Harbours, Docks and Piers.

By 10 Vict. c. 27, s. 34, the collector of (harbour) rates may either alone or with any other persons enter into any vessel within the limits of the harbour, dock or pier in order to ascertain the rates payable in respect of such vessel or of any goods therein.

Rate collector. Entry.

The master of every registered vessel shall on demand produce the certificate of the registry of such vessel to the collector of rates. (*b*)

Require production of certificate of registry.

When any goods are intended to be unshipped within the limits of the harbour, dock or pier the master of the vessel containing such goods shall, within twelve hours after the arrival of such vessel and within the limits of the harbour, dock or pier, deliver to the collector of rates the name of the consignee of the goods intended to be unshipped or other person to whom the same are to be delivered, and if the whole cargo be intended to be unshipped a copy of the bill of lading or manifest of the cargo, or if part only of the cargo be intended to be unshipped, the best account in writing in his power of

Require name of consignee of goods, or copy of bill of lading.

(*a*) 17 & 18 Vict. c. 104, *ante*, p. 245. (*b*) S. 36.

Notice of unshipment.

the kinds, weights and quantities of the several goods intended to be unshipped; and every such master shall, if required so to do by the collector of rates, give to him twelve hours notice of the time at which the cargo of such vessel or any part of the same is intended to be unshipped. (*a*)

Require account of shipper.

Before any person shall ship any goods on board of any vessel lying within the limits of the harbour, dock or pier, he shall give to the collector of rates a true account signed by him of the kinds, quantities and weights of such goods. (*b*)

Dispute between collector and master.

In case of dispute between the collector and master the goods are to be weighed or measured. (*c*) The master can only be called upon to pay the expense of such weighing or measuring in case the goods prove to be of greater weight than that stated. (*d*)

Non-payment of rates.

Entry.

Demand.

Distrain or arrest vessel, &c.

If the master of any vessel in respect of which any rate is payable to the undertakers, refuse or neglect to pay the same or any part thereof, the collector of rates may, with such assistance as he may deem necessary, go on board of such vessel and demand such rates, and on nonpayment thereof or of any part thereof take, distrain or arrest of his own authority such vessel and the tackle, apparel and furniture belonging thereunto or any part thereof, and detain the matters so distrained or arrested until the rates are paid; and in case any of the said rates shall remain unpaid for the space of seven days next after any distress or arrestment so made, the said collector may cause the matters so distrained or arrested to be appraised by two or more sworn appraisers, and afterwards cause the matters distrained or arrested or

Seven days after.

May be appraised.

(*a*) 10 Vict. c. 27, s. 37. (*b*) S. 39.
(*c*) S. 40. (*d*) S. 41.

any part thereof to be sold, and with the proceeds of such sale may satisfy the rates so unpaid and the expenses of taking, keeping, appraising and selling the matters so distrained or arrested, rendering the overplus (if any) to the master of such vessel upon demand. (*a*)

and sold.

Overplus to go to master.

If default be made in the payment of the rates payable in respect of any such goods, the collector of rates may distrain or arrest of his own authority such goods, and for that purpose may enter any vessel within the limits of the harbour, dock, or pier in which the goods may be, with such assistance as he shall deem necessary, or if the said goods have been removed without payment of such rates, he may distrain or arrest any other goods within the limits of the harbour, dock or pier, or the premises of the undertakers belonging to the person liable to pay such rates, and may sell the goods so distrained or arrested, and out of the proceeds of such sale pay the rates due to the undertakers, rendering the overplus, if any, to the owner of such goods on demand. . . provided always that the collector of rates shall before making any such distress or arrestment as aforesaid pay all duties which may be payable to Her Majesty in respect of the goods so distrained or arrested, and he may retain the amount of duties so paid out of the proceeds arising from the sale of such goods. (*b*)

Rates for goods.

Distrain or arrest goods.

Entry.

Distraint of other goods.

Sale.

Overplus to go to owner.

Duties payable to Her Majesty to be first met.

The harbour, dock or pier master may give directions for all or any of the following purposes (that is to say)—

Harbour master.

For regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour, dock or pier and within the prescribed limits, if any, and its position,

Directions as to entry into harbour, &c., and position therein.

(*a*) *Ib.* s. 44. (*b*) S. 45.

mooring or unmooring, placing and removing whilst therein.

Discharge of cargo or passengers.

For regulating the position in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land passengers or shall take in or deliver ballast within or on the harbour, dock or pier.

Dismantling of ship.

For regulating the manner in which any vessel entering the harbour or dock or coming to the pier shall be dismantled as well for the safety of such vessel as for preventing injury to other vessels, and to the harbour, dock or pier and the moorings thereof.

Remove unserviceable vessels.

For removing unserviceable vessels and other obstructions from the harbour, dock or pier, and keeping the same clear.

Quantity of ballast.

For regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock or pier shall have during the delivery of her cargo or after having discharged the same.

Not inconsistent with customs laws.

Provided always that nothing in this or the special Act (*a*) contained shall authorize the harbour master to do or cause to be done any act in any way repugnant to or inconsistent with any law relating to the customs or any regulation of the Commissioners of Her Majesty's Customs. (*b*)

Penalty for excess.

If any harbour master or any of his assistants without reasonable cause or in an unreasonable or unfair manner exercise any of the powers or authorities vested in the harbour master by this or the special Act, the person so

(*a*) Any Act thereafter passed authorizing the construction of a harbour, dock, or pier. (*b*) *Ib.* s. 52.

offending shall for every such offence be liable to a penalty not exceeding £5. (*a*)

Harbour master may remove vessels within docks where there is no person in charge to attend to his directions, provided that he cause a sufficient number of persons to be put on board of such vessel for the protection of the same. (*b*)

Removal of vessels when no one in charge,

He may also remove vessels for the purpose of repairing the harbour or dock after three days notice to the master in writing. (*c*)

or for purpose of repairing harbour.

The harbour master may enter into any vessel within the harbour or dock or at or near the pier, to search for any fire or light in or suspected to be in such vessel, contrary to the provisions of this or the special Act or of any bye-law made in pursuance thereof, and may extinguish the same. (*d*)

Entry and search for unauthorized lights.

Every person appointed to execute the office of a constable within the limits aforesaid shall have the same powers, protections and privileges within the limits aforesaid, and shall be subject to the same liabilities as constables have or are subject to by the laws of the realm. (*e*)

Harbour constables, powers, &c, of.

By s. 85, no bye-laws are to come into operation until allowed in the manner prescribed, and if no manner of confirmation be prescribed then not until they be allowed by some judge of one of the superior Courts or by the justices at quarter sessions.

Bye-laws.

All bye-laws made and confirmed according to the provisions of this and the special Act, when published and put up, shall be binding upon and be observed by all

Effect of.

(*a*) *Ib.* s. 53. (*b*) S. 58.
(*c*) S. 65. (*d*) S. 72.
(*e*) S. 79; and *see ante*, p. 140 *et seq.*

parties, and shall be sufficient to justify all persons acting under the same. (*a*)

Protection of officers.

If any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of this or the special Act or any Act incorporated therewith or by virtue of any power or anything thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last mentioned party shall not recover in any such action; and if no such tender have been made, the defendant may, by leave of the Court where such action is pending, at any time before issue joined, pay into Court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court. (*b*)

Amends.

[Piers and harbours constructed under provisional orders since the passing of the Piers and Harbours Act Amendment Act (*c*) are subject to the provisions of the Merchant Shipping Act, 1854 (*d*), as well as to every general Act then passed or thereafter to be passed relating to harbours or dues. (*e*)]

(*a*) *Ib.* s. 89.
(*b*) S. 91; and see *post*, p. 305.
(*c*) 25 & 26 Vict. c. 19.
(*d*) *Ante*, p. 245.
(*e*) 25 & 26 Vict. c. 19, s. 21.

Salmon Fishery Officers.

The powers of water bailiffs are as follows:— Water bailiffs.

Any water bailiff appointed under "The Salmon Fishery Acts, 1861 to 1873," acting within the limits of his district, may do all or any of the following things (that is to say):—

(1.) Examine any weir, dam, fishing weir, fishing mill, dam, fixed engine, or obstruction, or any artificial water-course connected with any salmon river. Examine weirs and dams.

(2.) Stop and search on any salmon river any boat, barge, coracle, or other vessel used in fishing, or which there is reasonable cause to suspect contains any salmon, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of "The Salmon Fishery Acts, 1861 to 1873." Stop and search boats.

(3.) Search and examine all nets, baskets, bags, or other instruments used in fishing, or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of "The Salmon Fishery Acts, 1861 to 1873." Search nets of persons suspected of illegal fishing. Seize fish

(4.) For the enforcement of the provisions of "The Salmon Fishery Acts, 1861 to 1873," every water bailiff shall be deemed a constable, and have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed now has, or is subject to in his constablewick, by virtue of the common law of the realm or of any statute. (*a*) To have same privileges as constables.

(5.) The production by a water bailiff of the instrument of his appointment, executed in the manner prescribed in "The Salmon Fishery Act, 1865," shall be a Warrant of bailiff.

(*a*) *Ante*, pp. 140 *et seq.*

sufficient warrant for any water bailiff exercising the authorities given to him under "The Salmon Fishery Acts, 1861 to 1873." (*a*)

Where this instrument was not produced on searching a boat the case was dismissed. (*b*)

Arrest of offenders.

If any person, between the expiration of the first hour after sunset on any day, and the beginning of the last hour before sunrise of the following morning, illegally takes or kills salmon, or is found on or near any salmon river with intent illegally to take or kill salmon, or having in his possession for the capture of salmon any instrument prohibited by "The Salmon Fishery Acts, 1861 to 1873," it shall be lawful for any water bailiff, together with any assistants, to seize and apprehend any such offender without warrant, and to deliver him, as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace, for the purpose of being convicted in the penalty assigned for the offence. (*c*)

They may also apprehend at any time any one found putting noxious material into a river with intent to destroy fish. (*d*)

Require production of license.

Any licensee under this Act, on producing his licence, any conservator, on producing a certificate of his being a conservator, or any water bailiff appointed in pursuance of this Act, on producing the instrument appointing him, may require any person found fishing with a rod and line, fishing weir or fishing mill, dam, net, or other instrument, to produce his licence. (*e*)

(*a*) 36 & 37 Vict. c. 71, s. 36.
(*b*) *Barnacott* v. *Passmore*, 22 L. J. M. C. 83.
(*c*) 36 & 37 Vict. c. 71, s. 38. (*d*) S. 13, & 24 & 25 Vict. c. 97, s. 61.
(*e*) 28 & 29 Vict. c. 121, s. 37.

PART VI.

LOCAL OFFICERS.

MINISTER.

THE duties of the minister relate to burial and exhumation.

Burial.

Every person is by the common law entitled to burial in the churchyard of the parish in which he died (*a*) without any fee, unless there be a custom to pay such fee. (*b*)

If the minister refuse to allow the burial, it may be enforced by mandamus (*c*), and an indictment will also lie against him on account of the inconvenience of keeping the corpse unburied. (*d*) He may elect, however, the spot in which the burial is to take place. (*e*)

The intervention of the High Court is confined to the enforcement of the common law right (*f*), and does not extend to the *mode* of burial. (*g*)

Exhumation.

"Except in cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial without licence (*h*)

Warrant of Secretary of State.

(*a*) *R.* v. *Taylor*, 7 Davy, 278 MS.; *R.* v. *Coleridge*, 2 B. & A. 806.
(*b*) *Andrews* v. *Cawthorne*, Willes, 536. (*c*) *R.* v. *Coleridge*, *u.s.*
(*d*) *R.* v. *Taylor*, *u.s.* (*e*) Prideaux, 15th ed. 452.
(*f*) *R.* v. *Coleridge*, *u.s.* (*g*) *R.* v. *Taylor*, *u.s.*
(*h*) This is usually addressed to the minister, churchwardens and overseers. *See Foster* v. *Dodd*, *post*, p. 261.

under the hand of one of Her Majesty's principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence. (*a*)

This section, which clearly has for its object the decent and proper removal of a dead body from one place of burial to another, seems to be relied on by the Secretary of State as a sufficient authority in law to him to order exhumation in any case where that course seems desirable or necessary. Whether this be so would appear doubtful; but no case seems yet to have arisen in which the Secretary of State's power in such matters has directly come into question.

Of coroner. The warrant of the coroner for the disinterment of a body within a reasonable time after death is addressed to the minister, churchwardens, and overseers, and, if regular, they are bound to execute it. (*b*) *Vide* "Warrants," *post*, p. 309.

Marriage. The better opinion seems to be that neither an action (*c*) nor an indictment (*d*) will lie against a minister for refusing to perform the ceremony of marriage.

(*a*) 20 & 21 Vict. c. 81, s. 25. (*b*) Jervis, 3rd ed. 418.
(*c*) *Davis* v. *Black*, 1 Q. B. 900.
(*d*) *R.* v. *Moorhouse James*, 2 Dea. C. C. 1.

CHURCHWARDEN.

Churchwarden. Duties.

It is the duty of churchwardens to enforce proper and orderly behaviour during the performance of divine service (*a*), and for this purpose they may direct in what particular free seats persons shall sit (*b*); but there is apparently no such duty when no service is being held. (*c*)

By 23 & 24 Vict. c. 32, s. 3, churchwardens may apprehend any person making a disturbance in any church, chapel, or churchyard.

They may pull off a man's hat irreverently worn (*d*), or remove the offender from the church (*e*), provided they use no unnecessary violence in so doing. (*f*)

They will be protected so long as they do no more than is necessary to secure the due performance of divine worship, and to prevent any inconvenience arising to the minister or congregation. (*g*)

Warrant of coroner.

The warrant of the coroner for the disinterment of a body within a reasonable time after death is addressed to the minister, churchwardens, and overseers, and, if regular, they are bound to execute it. (*h*)

Of Secretary of State.

Disinterring under an order of the Secretary of State, made under 22 Vict. c. 1, s. 1, renders the churchwardens trespassers, the order being invalid under 20 & 21 Vict. c. 81, s. 23, that section not being applicable to disused burial-places. (*i*)

(*a*) *Burder* v. *Selmes*, 1 Ec. & Ad. Rep. 114; *Burton* v. *Henson*, 10 M. & W. 105.

(*b*) *Asher* v. *Calcraft*, 35 W. R. 651, where the authorities on this subject will be found cited.

(*c*) *Worth* v. *Torrington*, 13 M. & W. 781.

(*d*) Hawk. P. C., I. c. 63, s. 29.

(*e*) *Hawe* v. *Planner*, 1 Saund. 10.

(*f*) *Reynolds* v. *Monkton*, 2 M. &. R. 384.

(*g*) *Cory* v. *Bryon*, 2 Curt. 396

(*h*) Jervis, 3rd ed. 418. *See* "Warrants," *post*, p. 309.

(*i*) *Foster* v. *Dodd*, L. *R.* 3 *Q. B.* 67.

Overseers.

Poor-rates.

The overseers are the persons who collect the poor-rates, and in whose possession are the rate books.

"Any person interested in or assessed to any rates made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom without fee or reward." (*a*)

By 17 Geo. 2, c. 38, s. 7, "The goods of any person assessed and refusing to pay may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant or certificate, and if any person shall find himself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same." (*b*)

Before any steps can be taken to enforce payment of a rate there must be a lawful demand of the rate. (*c*)

Rent-charge in lieu of tithes.

Rates to which any rent-charge, payable in lieu of tithes, is liable may be recovered in like manner as poor-rate on twenty-one days' notice being given. (*d*)

(*a*) 38 & 39 Vict. c. 55, s. 219; penalty for refusing, £5.

(*b*) See also 54 Geo. 3, c. 170, s. 12.

(*c*) *East India Company* v. *Skinner*, 1 Bott. 249.

(*d*) 6 & 7 Will. 4, c. 71, s. 69; 7 Will. 4 & 1 Vict. c. 69, s. 8.

Cost of levy.

In all cases where a warrant of distress is issued for the recovery of a poor-rate, the person against whom the same is issued shall be liable to pay the cost of such warrant, and of the broker or other officer for his attendance to make the levy, although such person may tender the amount of the rate before any levy is made. (*a*)

Appeal.

On appeal from any poor-rate which is either amended or quashed, the sum assessed may, notwithstanding, be levied and applied in satisfaction of the next effective rate. (*b*) Notice of appeal does not prevent distress being made for the recovery of the rate, but no greater sum shall be proceeded for than that assessed in the last effective rate. (*c*)

Excessive charges.

By 57 Geo. 3, c. 93, s. 1, distresses for small rents (*d*) under £20 are not to be charged for otherwise than as in the schedule thereto set forth, *i.e.* :—

	s.	*d.*
Levying distresses	3	0
Man in possession per day	2	6
Appraisement, whether by one broker or more, 6*d.* in the £1 on value of goods ; stamp, the lawful amount thereof, all expenses of advertisements (if any)	10	0
Catalogues, sale and commission, and delivery of goods, 1*s.* in the £1 on the net produce of the sale.		

Any party aggrieved may apply to a justice, who may adjudge treble the amount of the moneys unlawfully taken to be paid with costs, which may be levied by distress—in default, imprisonment. (*e*)

Brokers are required to give copies of their charges to the person distrained. (*f*)

Protection.

" Where any distress shall be made for any sum or

(*a*) 39 & 40 Vict. c. 61, s. 31. (*b*) 41 Geo. 3, c. 23, s. 1.
(*c*) S. 2. (*d*) Extended to rates and taxes by 7 & 8 Geo. 4, c. 17.
(*e*) 57 Geo. 3, c. 93, s. 2. (*f*) S. 6.

sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers on account of any defect or want of form in the warrant for the appointment of such overseers, or in the rate of assessment or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass, or on the case at the election of the plaintiff or plaintiffs." (*a*)

S. 9. "Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs."

S. 10. "Provided nevertheless, that no plaintiff or plaintiffs shall recover in any action for any such irregularity as aforesaid if tender of amends hath been made by the party or parties distraining before such action brought."

S. 11. [Overseers for the time being may levy for arrears.]

Warrant of coroner.

The coroner's warrant for the disinterment of a body within a reasonable time after death is addressed to the minister, churchwardens, and overseers, and, if regular, they are bound to execute it. (*b*)

(*a*) 17 Geo. 2, c. 38, s. 8.

(*b*) Jervis, 3rd ed. 418; and *see* "Warrants," *post*, p. 309.

Of Secretary of State.

As to the warrant of the Secretary of State, see *ante*, p. 259.

Lunatics.

The overseers must apprehend lunatics found wandering at large within the parish. (*a*)

Parish officers, acting under circumstances which the Court was of opinion justified them in interfering, placed a person who was alleged to be a lunatic, and who they had reason to infer was in a state of poverty and destitution, in the parish workhouse under restraint. The party so placed brought an action for false imprisonment and recovered a verdict with substantial damages. The costs and damages were charged against the parish, and in open vestry meeting the same had been allowed and had subsequently been paid out of the poor-rate. An information was filed by two ratepayers seeking to charge the parish officers personally with the damages and costs of the action. Under all the circumstances the Court dismissed the information with costs. (*b*)

(*a*) 16 & 17 Vict. c. 97, s. 68: see next page.
(*b*) *Attorney-General* v. *Pearson*, 10 Jur. 651.

Relieving Officer.

Lunatics. Arrest.

Every relieving officer of any parish who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take, or cause such person to be apprehended and taken, before a justice. (*a*)

As to liability for such arrest, see *Attorney-General* v. *Pearson*. (*b*)

(*a*) 16 & 17 Vict. c. 97, s. 68. (*b*) 10 Jur. 651 ; *ante* p. 265.

Surveyors of Highways. (*a*)

The powers of surveyors of highways are conferred by 5 & 6 Will. 4, c. 50.

District surveyors.

Justices may unite parishes into districts and appoint district surveyors. (*b*) Such surveyors are to have the same powers as highway surveyors except as to levying rates. (*c*)

Surveyors of county bridges.

The powers of highway surveyors for getting materials and preventing nuisances are extended to surveyors of county bridges and roads at the ends thereof. (*d*)

Highway surveyor may make a road through grounds adjoining highway.

The surveyor may "make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or inclosed ground set apart for building ground or as a nursery for trees) to be made use of as a public highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act." (*e*)

Removal of snow or earth.

"If any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the side of such highways, or from any other cause, the surveyor is required from time to

(*a*) In urban districts the surveyor is the urban authority: 38 & 39 Vict. c. 55, s. 144. (*b*) 5 & 6 Will. 4, c. 50, s. 14.
(*c*) S. 16. (*d*) S. 22. (*e*) S. 25.

time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed." (*a*)

Highway-rate.

For levying and recovering the highway-rate "the surveyor shall have the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor." (*b*)

Warrant of distress.

Where a warrant of distress is granted for a poor-rate or highway-rate, &c., the costs of obtaining it may also be levied. (*c*)

Under 27 Geo. 2, c. 20, s. 2, the overplus, after satisfying a distress, was to be returned on demand to the owner of the goods and chattels distrained. Where, therefore, a collector of highway-rates had in his hands a balance arising from the sale of goods distrained for non-payment of rates, and after the distress was satisfied, a person came to him and demanded the balance, and on being asked his authority said he had a written authority in his pocket but refused to produce it, it was *held* that this was not a sufficient demand within the statute to entitle the former owner of the goods to sue the collector for the balance. (*d*)

Where ratepayers convey material.

Where the ratepayers convey the material for repair, it is to be conveyed "at such times and places and in such manner as the surveyor may direct (the periods of spring, seed-time and harvest always excepted)." (*e*)

Inspection of books.

Surveyors must keep books of account which are to be open to the inspection of inhabitants rated to highway-rate. (*f*)

(*a*) *Ib.* s. 26. (*b*) S. 34, *vide* p. 262. (*c*) 12 Vict. c. 14, s. 1.
(*d*) *Charinton* v. *Johnson*, 14 L. J. Ex. 299.
(*e*) 5 & 6 W. 4, c. 50, s. 35. (*f*) S. 40; penalty, £5.

"If any surveyor or person employed by him shall by reason of the searching for, digging or getting any materials for repairing any highways, make any pit or hole in lands, common grounds, rivers or brooks as aforesaid (*a*), wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off and such fence supported and repaired during such time as the said pit or hole shall continue open, and within three days after such pit or hole shall be opened or made, where no materials shall be found, cause the same to be forthwith filled up, levelled and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down and finished off if required by the owner of the land or ground and so continued: and every surveyor shall within twenty-one days after he shall have been appointed to that office, cause all the said pits and holes which shall then be open and not likely to be further useful, to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle." [Penalty for default not to exceed £10.] (*b*)

Fencing holes made for materials.

Filling up.

After sufficient materials obtained.

Twenty-one days after appointment.

If he "shall lay or cause to be laid any heap of stone or any other material or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by such surveyor to guard against the same,

Obstructions at night.

(*a*) See *Ib.* ss. 51 to 54. (*b*) S. 55.

he shall forfeit for every such offence any sum not exceeding £5." (*a*)

Under this section it has been held that a surveyor is not liable for injury caused by a road under repair being left without fence or light. Nor is he liable at common law. (*b*)

Damage to bridges, mills, &c.

If he "shall dig, or cause to be dug, materials for the highways, whereby any bridge, well, building, dam, highway, occupation road, ford, mines or tin works, or other work may be damaged or endangered, he shall forfeit for every such offence" £5 (*c*). Civil liability to remain.

Pruning hedges.

"No person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March." "No person shall be obliged to fell any timber trees growing in hedges at any time whatsoever except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak trees growing in such highway or in such hedges except in the months of April, May or June, or any ash, elm or other trees in any other months than December, January, February or March." (*d*)

Cleanse water-courses.

He "shall have power to make, scour, cleanse and keep open all ditches, gutters, drains or water-courses, and also to make and lay such trunks, tunnels, plats or bridges as he shall deem necessary in and through any lands or grounds adjoining or lying near to any highway upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages

(*a*) *Ib.* s. 56.

(*b*) *Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487; but *see Pendlebury* v. *Greenhalgh*, 9 Q. B. D. 36. (*c*) 5 & 6 W. 4, c. 50, s. 57. (*d*) S. 66.

which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are herein directed to be settled and paid." (*a*)

Any encroachment on the highway may be taken down or removed by the surveyor. (*b*)

Remove encroachments.

"If any horse, ass, sheep, swine or other beast or cattle of any kind shall at any time be found wandering, straying or lying, or being depastured on any highway or on the sides thereof without a keeper (except on such parts of any road as lead or pass through or over any common or waste or enclosed ground), any surveyor or any other person authorized by him is hereby required to seize and impound every such horse, ass, sheep, swine or other beast or cattle in the common pound (if any) of the parish where the same shall be found, or in such other place as the surveyor shall have provided, or shall provide for that purpose, and the said horse, ass, sheep, swine or other beast or cattle, there to detain until the owner thereof shall for every and each horse, ass, sheep, swine or other beast or cattle so impounded pay any sum not exceeding 1*s.*, together with the reasonable charges and expenses, to be settled by any two justices of the peace, of impounding and keeping the same to the surveyor of the parish in which the beast so impounded shall have been found." (*c*)

Impound cattle straying.

"The surveyor, assistant surveyor, or district surveyor or any person acting under his authority, and such other person as he shall call to his assistance, or any other person witnessing the commission of [any] offence, without any other authority than this Act," may "seize and detain such unknown person who shall commit any such

(*a*) *Ib.* s. 67. (*b*) S. 69. (*c*) S. 74.

Arrest of unknown offenders.

offence and take him forthwith before any justice of the peace." (*a*)

These offences are:—

Carrying away materials belonging to surveyor. (*b*)

Committing nuisances—riding on footpaths, injuring the road, damaging banks, causeways, direction posts, milestones, making fires, baiting bulls, laying timber, running filth. (*c*)

Persons guilty of pound-breach. (*d*)

Drivers causing damage to others or quitting road or driving carriage without owner's name, or not keeping left side or interrupting free passage. (*e*)

Protection.

"No action or suit shall be commenced against any person for anything done in pursuance of or under the

Notice.

authority of this Act until twenty-one days' notice has been given thereof in writing to the person against whom such action is intended to be brought, nor after sufficient

Tender of amends.

satisfaction or tender of satisfaction has been made to the

Limitation.

party aggrieved, nor after three calendar months next after the fact committed for which such action or suit shall be so brought; and every such action shall be brought, laid

Venue.

and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant in

General issue.

such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial which shall be had thereupon, and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof, given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any action or suit shall not

(*a*) *Ib.* s. 79. (*b*) S. 47. (*c*) S. 72. (*d*) S. 75.
(*e*) S. 78. For offences against the Vagrant Act, see *ante*, p. 156.

be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit or suffer a discontinuance of such action, or if upon any demurrer in such action, judgment should be given for the defendant therein, then and in any of the cases aforesaid, such defendant shall have costs as between attorney and client, and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by law." (*a*)

Verdict.

Costs.

(*a*) 5 & 6 Will. 4, c. 50, s. 109.

District Surveyor (Metropolis).

District surveyor (Metropolitan). Inspect underground dwellings.

District surveyors may enter and inspect at any time between nine in the morning and six in the evening, underground rooms occupied separately as dwellings, in order to see that they are in accordance with the provisions contained in the previous section of this Act. (*a*)

Buildings.

Every building and every work done to, in or upon any building shall (with the exemptions hereinbefore mentioned (*b*)) be subject to the supervision of the district surveyor appointed to the district in which the building is situate. (*c*)

Inspect buildings.

"At all reasonable times during the progress of any building or work affected by this Act, it shall be lawful for the district surveyor to enter and inspect such building or work" (*d*), and he may also enter "for the purpose of ascertaining whether any buildings erected in such premises are in such a situation or possess such characteristics as are hereinbefore required in order to exempt them from the operation of this Act, and he may do all such things as are necessary for the above purpose." (*e*)

Where building takes place without notice to surveyor, he may enter and inspect within a month after discovery that the building has been erected. (*f*)

Surveyor may inspect building.

"The district surveyor of any district may at all reasonable times during the progress and within three months next after the completion of any house, building, erection

(*a*) 18 & 19 Vict. c. 120, s. 104. Tender of amends is allowed in case of action brought by s. 224.

(*b*) *I.e.*, public buildings.

(*c*) 18 & 19 Vict. c. 122, s. 31.

(*d*) S. 42.

(*e*) S. 43.

(*f*) S. 105.

or work in such district affected by, and not exempted from any other provisions of this Act or by any bye-law made in pursuance of this Act, or by any terms or conditions upon which the observance of any such provisions or any of such bye-laws may have been dispensed with, enter and inspect such house, building, erection or work." (*a*)

"No writ or process shall be sued out against any district surveyor or other person for anything done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing has been delivered to him or left at his office or usual place of abode, stating the cause of action and the name and place of abode of the intended plaintiff and of his attorney or agent in the cause; and upon the trial of any such action, the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action and not afterwards; and shall be laid and tried in the county or place where the cause of action occurred and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder." (*b*)

Protection.

Notice.

Limitation.

Venue.

General issue.

(*a*) 41 & 42 Vict. c. 32, s. 21. (*b*) 18 & 19 Vict. c. 122, s. 108.

Registrar of Births and Deaths.

Registrar of births and deaths. Powers.

These officers may under certain circumstances require the attendance of certain persons who are by the Act below cited required to give information concerning births or deaths.

"Where a birth has from the default of the parents or other persons required to give information concerning it not been duly registered, the registrar may at any time after the end of forty-two days from such birth by notice in writing require any of the persons required by this Act to give information concerning such birth to attend personally at the registrar's office, or at any other place appointed by the registrar within his sub-district, within such time (not less than seven days after the receipt of such notice and not more than three months from the date of the birth) as may be specified in such notice, and to give information to the best of such person's knowledge and belief of the particulars required to be registered concerning such birth and to sign the register in the presence of the registrar. (*a*)

The persons required to give information are father, mother, in default, the occupier of the house, each person present at the birth or the person having charge of the child. (*b*) If illegitimate, the father need not give information unless he acknowledge paternity. (*c*) In the case of living new-born children found, by any person finding or in whose charge placed. (*d*)

"Where any death has from the default of the persons

(*a*) 37 & 38 Vict. c. 88, s. 2. (*b*) S. 1. (*c*) S. 7. (*d*) S. 2.

required to give information concerning it not been registered, the registrar may at any time after the expiration of fourteen days and within twelve months from the day of such death or from the finding of the dead body elsewhere than in a house, by notice in writing require any person required by this Act to give information concerning such death to attend personally at the registrar's office, or at any other place appointed by the registrar within his sub-district, within such time (not less than seven days after the receipt of the notice nor more than twelve months after the death or finding of the dead body) as may be specified in the notice, and to give the said information to the best of the informant's knowledge and belief and to sign the register in the presence of the registrar." (*a*)

The persons required to give information are the nearest relations of the deceased present at death or in attendance during last illness—in default, every other relative dwelling or being in the sub-district—in default each person present or the occupier of house—in default, each inmate of house or person causing body to be buried. (*b*) In case of person dying or found dead not in a house, every relative having knowledge of the particulars—in default, every person present at the death, the person finding or taking charge of the body or causing the body to be buried. (*c*)

(*a*) *Ib.* s. 13. (*b*) S. 10. (*c*) S. 11.

The following officers are simply the agents of the local authority and no liability therefore attaches to them *primâ facie*. They are, however, accountable as other agents are in tort, as to which see "Principal and Agent." (*a*)

ADULTERATION.

Adulteration. Taking samples.

"Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed." (*b*)

It is not necessary that the person taking proceedings under s. 20 should have acted personally in the purchase of the sample. (*c*)

Notification to the seller immediately after purchase, as required by s. 14, of the intention to submit the sample to be analysed by the public analyst is a condition precedent to a prosecution. (*d*) But this does not apply to milk samples. (*e*)

To constitute an offence a false representation of the "nature, substance and quality," must be made at the time of the sale. (*f*)

(*a*) *Post*, p. 296.
(*b*) 38 & 39 Vict. c. 63, s. 13.
(*c*) *Horder* v. *Scott*, 5 Q. B. D. 552.
(*d*) *Barnes* v. *Chipp*, 3 Ex. D. 176.
(*e*) *Rouch* v. *Hall*, 6 Q. B. D. 17.
(*f*) *Kirk* v. *Coates*, 16 Q. B. D. 49

It is no defence to allege that the purchaser having bought for analysis only was not prejudiced by such sale, nor to prove that the article was not defective in all three respects—nature, substance and quality. (*a*)

Any of these officers may also "procure at the place of delivery any sample of any milk in the course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk. (*b*) Milk.

Streets and places of public resort are to be places within s. 17 of the principal (*i.e.* the above recited) Act where samples may be procured, which section refers to shops. (*c*)

(*a*) 42 & 43 Vict. c. 30, s. 2. (*b*) S. 3. (*c*) S. 5.

Canal Boats.

Canal boats inspection.

"Where any person duly authorized by a registration or sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may on producing (if demanded) either a copy of his authorization purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorized as aforesaid, enter by day such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act (*a*), or a person suffering from any infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

Master to render assistance.

"The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section." (*b*)

(*a*) Registration required by s. 1; education of children by s. 6.
(*b*) 40 & 41 Vict. c. 60, s. 5.

Explosives.

Explosives.

"Any officer authorized by the local authority may on producing if demanded either a copy of his authority purporting to be certified by the clerk or some member of the local authority or some other sufficient evidence of his authority, require the occupier of any store (not being subject to the inspection under this Act of any inspector of mines) or any registered premises, or any small firework factory, to show him every or any place, and all or any of the receptacles in which any explosive or ingredient of an explosive, or any substance the keeping of which is restricted or regulated by this Act that is in his possession is kept, and to give him samples of such explosive ingredient or substance, or of any substance which the officer believes to be an explosive or such ingredient or substance." (*a*)

Inspection of stores.

Samples.

"Where a constable or any officer authorized by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same until some Court of summary jurisdiction has determined whether there was or not a contravention of this Act, and s. 13 of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section and as if the seizure were a seizure in pursuance of that section." (*b*)

Seizure of petroleum.

As to the power of officers of the local authority to arrest for offences see 38 & 39 Vict. c. 17, s. 78. (*c*)

Arrest.

(*a*) 38 & 39 Vict. c. 17, s. 69. (*b*) 44 & 45 Vict. c. 67, s. 4.
(*c*) *Ante*, p. 231.

Public Health.

Lodging-houses.

Every lodging-house established under this Act which shall be within the district of a local board of health shall at all times be open to the inspection of such board and the officers thereof from time to time authorized by such board to make such inspection. (*a*)

Public health.

"The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall at all times when required by any officer of the local authority give him free access to such house or any part thereof." (*b*)

Nuisances.

S. 102. "The local authority or any of their officers shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

"Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid until the nuisance is abated or the works ordered to be done are completed, as the case may be.

"Where an order of abatement or prohibition has not

(*a*) Labouring Classes Lodging Houses Act, 1851, s. 50.
(*b*) 38 & 39 Vict. c. 55, s. 85.

been complied with or has been infringed, the local authority or any of their officers shall be admitted from time to time at all reasonable hours or at all hours during which business is in progress, or is usually carried on, into the premises where the nuisance exists in order to abate the same."

Food.

S. 116. "Any medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk exposed for sale or deposited in any place for the purpose of sale or of preparation for sale and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged, and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant in order to have the same dealt with by a justice."

Seize. No summons or notice to the person to whom it belongs is necessary. (*a*)

A butcher whose residence was half a mile from his shop was requested on a Sunday afternoon to go himself or send some one with the key, to admit the inspector of nuisances to the shop in order that some meat there might be examined. The butcher having refused, it was held that no offence was committed under s. 118 (*b*) as it was not a "reasonable time." (*c*)

(*a*) *White* v. *Redfern*, 5 Q. B. D. 15.

(*b*) This section imposes a penalty on persons hindering an inspector.

(*c*) *Small* v. *Bickley*, 32 L. T. N. S. 726.

A butcher who carried on business in a town lived at the outskirts nearly a mile from the shop. A quantity of diseased meat loaded in carts was carried into the yard belonging to the shop and there seized by the police. In this yard was a slaughter-house. It was held that the yard was a "place" within s. 2 of 26 & 27 Vict. c. 117, which corresponds to this section; and that assuming that the word "place" was used in the same sense in s. 2 as in s. 3 (which corresponds to s. 118 of this Act) the word was not to be limited to places *ejusdem generis* with "slaughter-house, shop, building or market." (*a*)

Prevention of disease.

S. 137. "The local authority and their officers shall have power of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid." (*b*)

Police.

S. 171. The provisions of the Towns Police Clauses Act, 1847 (*c*), with respect to the following matters—namely (1) with respect to obstructions and nuisances in the streets; (2) Fires; (3) Places of public resort and (4) Hackney carriages; (5) Public bathing—shall for the purpose of regulating such measures in urban districts be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable" and the expression "any constable or other officer appointed by virtue of this or the special Act" shall for the purposes of this Act respectively include any superintendent of police and any constable or

(*a*) *Young* v. *Gattridge*, L. R. 4 Q. B. 166.

(*b*) By s. 134 the Local Government Board are authorized to make regulations in case of the breaking out of epidemic disease.

(*c*) *Ante*, pp. 168 & 197.

officer of police acting for or in the district of any urban authority, and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district.

S. 264. "A writ or process shall not be sued out against or served on any officer of a local authority or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act until the expiration of one month after notice in writing has been served on such officer or person, clearly stating the cause of action and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause, and on the trial of any such action the plaintiff shall not be permitted to give in evidence any cause of action which is not stated in the notice so served, and unless such notice is proved the jury shall find for the defendant. Protection. Notice. Evidence confined to. Proof of.

"Every such action shall be commenced within six months next after the accruing of the cause of action and not afterwards, and shall be tried in the county or place where the cause of action occurred and not elsewhere. Limitation. Venue.

"Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may by leave of the Court at any time before trial pay into Court under plea such sum of money as he may think proper, and if upon issue joined or upon any plea pleaded for the whole action the jury find generally for the defendant, or if the plaintiff be non-suited, or judgment Amends. Plead in bar. Payment into Court.

Costs.

be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

Personal liability.

S. 265. "No matter or thing done, and no contract entered into by any local authority, or joint board, or port sanitary authority, and no matter or thing done by any member of any such authority, or by any officer of such authority, or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done, or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever."

Sanitary.

Sanitary.

"If the nuisance authority shall be of opinion upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious or contagious disease, it shall be the duty of the nuisance authority to give notice in writing requiring the owner or occupier of such house or part thereof to cleanse and disinfect the same as the case may require . . . . and (in default) the nuisance authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner." (*a*)

Disinfection.

Removal of infected persons brought within district by boat.

S. 29. "Any nuisance authority may with the sanction of the Privy Council signified in manner provided by the Public Health Act, 1858, lay down rules for the removal to any hospital to which such authority is entitled to remove patients, and for keeping in such hospital so long as may be necessary any persons brought within their district by any ship or boat who are infected with a dangerous and infectious disorder."

S. 31. "The power of entry given to the authorities by the 11th section of the Nuisances Removal Act, 1855, may be exercised at any hour when the business in respect of which the nuisance arises is in progress or is usually carried on."

The 11th section of the Nuisances Removal Act, 1855, is as follows:

(*a*) 29 & 30 Vict. c. 90, s. 22.

Nuisances Removal Act, 1855.

"The local authority shall have power of entry for the following purposes of this Act and under the following conditions:

Powers under.

"1. To ground proceedings.

"For this purpose when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer on any person having custody of the premises, of admission to inspect the same at any hour between nine in the morning, and six in the evening [if not granted justice may order admission].

Refers to Metropolis only (see *infra*).

"2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute and inspect works ordered by justices to be done under this Act. For these purposes, whenever under the provisions of this Act a nuisance has been ascertained to exist, or when an order of abatement or prohibition has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid until the nuisance shall have been abated, or the course of the drain shall have been ascertained or the works ordered to be done shall have been completed, as the case may be.

"3. To remove or abate a nuisance in case of non-compliance with, or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour under the powers and for the purposes of this Act.

"For this purpose the local authorities or their officers may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found at all

reasonable hours, or at all hours during which business is carried on on such premises without notice. (*a*)"

Bake-houses.

The sanitary authority is to exercise the powers of inspectors under the Factory Act, 1878, in case of retail bakehouses; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection . . . and otherwise as an inspector under the Factory Act. (*b*)

(*a*) By 38 & 39 Vict. c. 55, s. 343, this Act is repealed, except as regards the Metropolis.

(*b*) 46 & 47 Vict. c. 53, s. 17 (1), and see *ante*, p. 240.

Local Acts.

Local Acts. Liability of officer.

Where anything is done under a local Act (*i.e.* not a public general statute) the officer concerned is the agent only of the body authorized to put the Act into execution. He is therefore not primarily liable for breach or excess of duty, but his liability is regulated by the law of principal and agent. (*a*)

Limitation.

"The period within which any action may be brought for anything done under the authority or in pursuance of any such Act or Acts shall be two years, or in case of continuing damage then within one year after such damage shall have ceased." (*b*)

Bye-Laws.

Bye-laws.

Regulations of Government departments and of local authorities, made under powers conferred by statute, are included under this heading.

Definition.

A bye-law is a law made by some authority less than the Sovereign or Parliament in respect of a matter specially or impliedly referred to that authority and not provided for by the general law of the land. (*c*)

The necessary ingredients of their validity are:

Necessary ingredients.

(1.) Consistent with and not repugnant to the general law.

(2.) Certain, *i.e.* not ambiguous, and affording complete direction to those who are to obey them, and have definite penalties for their breach, which must not be excessive. (*d*) There may be power to mitigate the penalty. (*e*)

(*a*) See *post*, p. 296.
(*b*) 5 & 6 Vict. c. 97, s. 5.
(*c*) *Vide* Lumley, p. 2.
(*d*) *Clarke* v. *Tucker*, 2 Ventr. 183.
(*e*) *Piper* v. *Chappell*, 14 M. & W. 624.

(3.) General in their application, *i.e.* obligatory on all persons equally.

(4.) Reasonable,—in other words—examinable by the Court. (*a*)

Where the Commissioners of Sewers granted licences to place hoardings for two months only instead of for a sufficient time to erect buildings, and required a new fee at the commencement of each new period, they were *held* unreasonable and bad. (*b*) So also was a bye-law which required notice as to the erection of new buildings and deposit of plans in so far as regarded temporary structures. (*c*) So also was one made by a council under the Municipal Corporations Act, 1882, s. 23, providing that "no person not being a member of Her Majesty's army or auxiliary forces acting under the orders of his commanding officer, should sound or play upon any musical instrument in any of the streets of the borough on Sunday." (*d*)

And one where a penalty was imposed on "every person who in any street shall sound or play upon any musical or noisy instrument, or shall sing, recite or preach in any street without having previously obtained a licence in writing from the mayor." (*e*)

A rural sanitary authority purporting to act under the powers of ss. 44 and 276 of the Public Health Act, 1875, by bye-law prohibited the keeping of swine within fifty feet of any dwelling-house: *Held* to be unreasonable, and therefore bad. (*f*)

(*a*) *Marshall* v. *Smith*, L. R. 8 C. P. 416.

(*b*) *R.* v. *Commissioners of Sewers*, 22 L. T. 582.

(*c*) *Fielding* v. *Rhyl Commissioners*, 3 C. P. D. 272.

(*d*) *Johnson* v. *Mayor of Croydon*, 16 Q. B. D. 708.

(*e*) *Munro* v. *Watson*, L. T. (N.) 12, 3, 87.

(*f*) *Heap* v. *Burnley Union*, 12 Q. B. D. 617.

(5.) Not *ultra vires*—*i.e.*, within the scope of the authority delegated in the particular case.

A bye-law respecting non-compliance with the requirements of the Board is *ultra vires*. (*a*) So also is one affecting premises erected prior to the time when the district came into being under the Local Government Acts. (*b*) And one made under 21 & 22 Vict. c. 98, s. 34, giving power to the local board to pull down buildings erected contrary to the bye-laws. (*c*)

Dispensing power.

There is apparently no dispensing power reserved to the makers of bye-laws. (*d*)

Good or bad in part.

It may be good in part and bad in part if the two parts are distinct from each other. (*e*)

Confirmation.

Confirmation by a superior authority does not make a bye-law legal if otherwise illegal. Where the Lord Chancellor was reported to have confirmed a bye-law it was said, "It is never the better for that, for that is done of course. If the orders be not good, let the parties look to that at their peril." (*f*)

(*a*) *Young* v. *Edwards*, 33 L. J. M. C. 227.

(*b*) *Burgess* v. *Peacock*, 16 C. B. N. S. 624.

(*c*) *Brown* v. *Local Board of Holyhead*, 32 L. J. Ex. 25.

(*d*) *Wortley* v. *Notts Local Board*, 21 L. T. N. S. 582.

(*e*) *The Fishermen of Faversham*, 8 T. R. 357.

(*f*) *Stationers' Company* v. *Salisbury*, Comb. 222.

PART VII.

LIABILITIES.

GENERALLY.

Liability, personal.

IN considering the question of the liability of public officers for acts done by them whereby any member of the public is prejudiced, it becomes important to remember that, generally speaking, nothing turns upon the legal relationship of principal and agent. A public officer is not the agent of anybody, but is himself personally liable for acts done by him in excess of legal authority.

Every one who is appointed to discharge a public duty and receives a compensation, whether from the Crown or otherwise, is constituted a public officer. (*a*)

The head of a public office under Government, with power to appoint and remove the servants of the office who are to be paid by and give at his discretion security to Government, is not responsible to an individual for a loss occasioned by the default of such servants. The servant who is guilty of the default is. (*b*)

"We think that in all cases deputies are answerable for their own personal misfeasances (such as detaining the letters in question), and in the present case the deputies are made by the Act of Parliament, *ex necessitate rei*, substantive officers, and their duty pointed out as such,

(*a*) *Irwin* v. *Grey*, L. R. 1 C. P. 171.
(*b*) *Lane* v. *Cotton*, 1 Raym. 646.

and it is fitter for the subject to resort to them for their satisfaction for injuries done by themselves than to their principals." (*a*)

A collector of customs was held to be not a mere servant of the commissioners, but a substantive and immediate officer of the Crown; and his functions as collector are ministerial. Therefore he is liable in an action for nonfeasance in the exercise of his office. (*b*)

As to the question when, generally, officers are liable, there would appear at first sight to be a slight conflict of authority, but on reflection it will be seen that no conflict does, in fact, exist. On the one hand we have *Sutherland* v. *Murray* (*c*), which lays down that an act lawful in itself may become unlawful if carried out in an oppressive or cruel manner. On the other hand, there are cases, of which *Dawkins* v. *Lord Paulet* (*d*) is an example, from which it would seem that persons are not liable for maliciously doing their duty. The true rule would appear to be that so long as the officer is within the scope of his authority he is protected, but if he exceeds that authority, whether from inadvertence, recklessness, or wilfulness, he is liable.

Connected with the subject of liability is the principle which was illustrated in the case of *Armory* v. *Delamirie* (*e*), and which is known under the title of

Omnia præsumuntur contra spoliatorem.

Omnia præsumuntur contra spoliatorem.

Every presumption shall be made to the disadvantage of a wrongdoer. If an officer use the powers which he possesses against an individual on any other than public

(*a*) *Rowning* v. *Goodchild*, 2 W. Bl. 906, *per* De Grey, C.J.
(*b*) *Barry* v. *Arnand*, 10 A. & E. 646. (*c*) 1 T. R. 538.
(*d*) L. R. 5 Q. B. 114. (*e*) 1 Str. 504.

grounds, he would become a wrongdoer, and this principle would presumably be applicable.

Where a person who wrongfully converted property refused to produce it, it was presumed as against him to be of the best description. (*a*) A person claimed a debt from another, the proof of which was to be found in certain documents which were sealed up and in his keeping. He broke open the packet without authority to do so. Here, although the Court did not doubt that all the papers were before it, and that the claim was just, it disallowed the whole demand *in odium spoliatoris*. (*b*) And where a necklace was missed, and part of it traced to the defendant, who was unable satisfactorily to account for it, the whole necklace was presumed to have come to his hands. (*c*)

Exceptions to personal liability.

The officers of the House of Commons, those of the sheriff and high bailiff, and those employed by the local authorities discussed in Part VI. (*d*), are not, however, within the rule as to primary personal liability.

The officers of the House of Commons are the agents of the Serjeant-at-Arms.

The local officers are the agents of the local authority.

With regard to these two classes of officers the ordinary rules as to principal and agent in tort apply. (*e*)

The bailiffs are the agents of the sheriff and high bailiff respectively, but the sheriff and the high bailiff have a special liability attaching to them over and above the ordinary liability of a principal for the acts of the agent, as to which see *ante*, pp. 15 and 71.

(*a*) 1 Str. 504. (*b*) *Crisp* v. *Anderson*, 1 Stark. 35.
(*c*) *Mortimer* v. *Cradock*, 12 L. J. C. P. 166.
(*d*) *Ante*, p. 278 *et seq.* (*e*) *See* next page.

Principal and Agent.

Principal and agent, Rules as to.

There are two main rules governing the liability of principal for the acts of his agent in tort.

First rule.

The first of these is that the principal is liable for every act of the agent done within the scope of the authority delegated to him, either where the injury arises from the manner of doing the act, or from the circumstances under which it was done, and ought not to have been done. (*a*)

Where there is a violation of a right to property or to personal security, he who procures the wrong to be done is a joint wrongdoer, and may be sued either alone or jointly with the agent for the wrong done. (*b*)

If an assault or imprisonment of the plaintiff is the necessary or probable consequence of orders given by the defendant, he will be responsible, although he did not directly order it or contemplate the possibility of its occurrence. (*c*)

Second rule.

The second rule is that the principal is liable if the act complained of be one which was done for the use or benefit of the principal, whether or not there was any precedent authority, and the principal subsequently ratifies the act. (*d*)

The fact, however, of the principal becoming liable does not exonerate the agent from his liability for tortious acts done by him. He may therefore be sued either separately or jointly with his principal. Where a bailiff

(*a*) *Bayley* v. *Manchester Railway Company*, L. R. 7 C. P. 415.
(*b*) *Per* Erle, J., *Lumley* v. *Gye*, 2 El. & Bl. 216.
(*c*) *Glynn* v. *Houston*, 2 M. & G. 337.
(*d*) *Wilson* v. *Tumman*, 6 M. & Gr. 242.

illegally compelled the plaintiff under a threat of distraining his goods to pay him a sum of money, it was held that the fact of the bailiff's having, before the commencement of the action, paid over the entire sum the sheriff, who had paid it into the Exchequer, was no defence. (*a*)

The relationship of principal and agent is unknown to the criminal law.

(*a*) *Snowden* v. *Davis*, 1 Taunt. 359.

Damages.

Damages generally.

In some cases the damages recoverable in these actions are fixed by statute, *e.g.*, in cases of extortion by sheriffs' officers treble damages are recoverable by 29 Eliz. c. 4.

In general, however, the damages will depend on the extent of the trespass committed. In cases where there is simple breach or excess of duty, without any circumstances of aggravation, the amount recoverable would be limited to the actual damage sustained. On the other hand, where there is any high-handedness on the part of the officer, or any attempt by him to use the powers which the law confers upon him, unfairly to the prejudice of any member of the public, exemplary or vindictive damages will be recoverable.

In *Brunswick* v. *Sloman* (*a*) it was laid down in reference to cases of this latter description that the proper amount to be awarded must depend so much upon the circumstances of each case that it is impossible to fix any standard by which to measure the amount.

Where some working-men were unlawfully imprisoned for six hours only, being in the meantime well fed and cared for, and the jury nevertheless awarded £300 to each of them, the Court refused to set the verdict aside on the ground that it seemed to them probable that the jury considered the importance of the right of personal liberty rather than the position of the plaintiffs. (*b*)

So also in actions of assault and battery the Court will seldom interfere; and the jury may take into considera-

(*a*) 8 C. B. 321. (*b*) *Huckle* v. *Money*, 2 Wils. 205.

tion circumstances which go to aggravate or mitigate the injury sustained. (*a*)

Connected with the subject of damages is the principle known as

Trespass ab initio.

It may be stated as follows :—

Trespass *ab initio.*

Where a power to do a certain act is conferred by the law upon an individual, and in the doing of it he commits a misfeasance (that is to say, exceeds his authority), it shall be presumed that he entered upon the performance of it with the intention of exceeding his authority, and that therefore the trespass, which by such excess he has committed, shall have relation back to the time of his entering upon the performance of the act. In other words, whatever privilege he previously possessed is, by the excess, annulled. (*b*)

(*a*) *Tullidge* v. *Wade*, 8 Wils. 18.
(*b*) *Six Carpenters' Case*, 8 Coke, 146.

PROTECTION.

(1) PREROGATIVE.

Prerogative protection.

The Crown may in the case of action arising against any of its officers demand a trial at bar on the ground that it has an interest in the subject-matter of the suit. (*a*) In that case it will be for "the plaintiff to shew the Court that it is misinformed" (*b*) and that the statement of the Attorney-General that the Crown is interested is groundless. If he fails to satisfy the Court as to this, the suit will become a Crown suit and be regulated by the Crown Suits Act, 1865. The procedure in a Crown suit does not come within the scope of this work.

When available.

Crown becomes responsible.

It may however be here observed that by the Crown electing to come in and defend, it necessarily takes upon itself the responsibility for the act complained of on the ground of the maxim "Omnis ratihabitio retrotrahitur et mandato priori æquiparatur." (*c*)

Damages in that case.

But no damages can be obtained against the Crown, for "the Crown can do no wrong." (*d*)

In the event therefore of judgment being given for the plaintiff, "the redress, if any, must be by petition of right, which is now regulated by 23 & 24 Vict. c. 34. Under s. 9 of that Act, he obtains a judgment that he is entitled to such relief as the Court shall think just." (*e*)

(*a*) *Buron* v. *Denman*, 2 Ex. 167; *Dixon* v. *Farrar*, 18 Q. B. D. 43.

(*b*) *Per* Tindal, C.J., *Paddock* v. *Forester*, 8 Dowl. 834; *Rowe* v. *Brenton*, 3 M. & R. 133.

(*c*) *Buron* v. *Denman*, 2 Ex. 167.

(*d*) 2 Rolle, R. 304.

(*e*) *Per* Blackburn, J., *Thomas* v. *The Queen*, L. R. 10 Q. B. 33.

(2) Statutory.

Statutory protection.

Nearly the whole of the officers referred to in this work have a special protection afforded to them either by the same statute which confers upon them their power or by some general enactment passed for their especial benefit. By referring to the wording of these protective enactments (they will be found recited above) it will be seen that they are all, practically speaking, drawn upon one plan. Their leading characteristics are notice of action, limitation of action, tender of amends, payment into Court, confinement of evidence to statement in notice, and in some cases a special judgment where the facts go to shew probable cause for the act complained of. These protective clauses must, therefore, in case of action against any of these officers, form the subject of first consideration, in order that the plaintiff may be enabled to ascertain how far (if at all) he is by them barred of a legal remedy, which would perhaps be open to him as against any ordinary individual. An important point to bear in mind is that these enactments are confined to actions of tort, so that in those cases where the complainant has good ground for proceeding and elects to proceed by indictment, it will be unnecessary to consider them.

When available

They are "required for the purpose of protecting these officers in those cases where they intended to act within the strict line of their duty, but by mistake exceeded it." (*a*) Their object is "clearly to protect persons acting

(*a*) *Per* Kenyon, C.J., *Greenway* v. *Hurd*, 4 T. R. 555.

illegally, but in supposed pursuance, and with a *bonâ fide* intention of discharging their duty." (*a*)

To entitle the defendant to protection, he must *bonâ fide* believe that his duty rendered it incumbent on him to do the act complained of (*b*), and that the act done was one which he might reasonably suppose to have authority for doing. (*c*) "It is not enough for the defendant to have thought generally that he possesses the power to do what was done; he must also think it was done in execution of some particular provision of the statute which applies." (*d*)

"Where the facts are such that a party may be considered as having any fair colour for supposing that he is warranted by the Act of Parliament in doing that which is made the subject of an action, he is entitled to notice." (*e*) "The case must lie between a mere foolish imagination and a perfect observance of the statute." (*f*).

The defendant is entitled if he honestly believes in the existence of a state of things which, if it had existed, would have justified his doing the acts complained of under the statute. Some facts must exist such as might give rise to an honest belief; but it is not necessary that the belief should be reasonable. (*g*)

Sheriff. A sheriff who is sued for an excessive levy is not within the protection given by these statutes. (*h*)

(*a*) *Per* Ellenborough, C.J., *Theobald* v. *Crichmore*, 1 B. & Ald. 229.

(*b*) *Booth* v. *Clive*, 10 C. B. 827.

(*c*) *Chamberlain* v. *King*, L. R. 6 C. P. 474.

(*d*) *Per* Denman, C.J., *Smith* v. *Hopper*, 9 Q. B. 1014.

(*e*) *Per* Bayley, J., *Beechey* v. *Sides*, 9 B. & C. 806.

(*f*) *Per* Williams, J., *Cann* v. *Clipperton*, 10 A. & E. 589.

(*g*) *Chamberlain* v. *King*, L. R. 6 C. P. 474; and see *Griffith* v. *Taylor*, *ante*, p. 149.

(*h*) *Copland* v. *Powell*, 1 Bing. 369.

Notice.

Notice of action.

Actions against officers may be divided into three kinds :—(1) those which arise where the officer has simply done his duty; (2) those where he may be supposed to have had reasonable grounds for believing that he was simply doing his duty; and (3) those where the officer could not have had any reasonable grounds for believing that he was acting in discharge of his duty. It is only in the second class of cases that notice is absolutely necessary. (*a*)

Where a statute enacted that no plaintiff should recover in any action commenced against any person for anything done or performed in execution or under the authority of the Act, unless notice thereof in writing should be previously given twenty-eight days before the commencement of the action: it was *held* that a notice was necessary in those cases only in which the party against whom the action was brought had reasonable ground for supposing that the thing done by him was done in execution of, or under the authority of, the Act.

Per Bayley, J.:—Where a statute gives protection to persons acting in execution or in pursuance of it, all persons acting under its provisions are entitled to that protection, although they exceed their authority by so doing. There must, however, be some limits to the rule, and it seems to me that there are cases which warrant this distinction. If an officer does any act, part of which is and part of which is not authorized by the statute, or if a magistrate act in a case which his general character

(*a*) *Greenway* v. *Hurd*. 4 T. R. 555.

authorized him to do, the mere excess of authority in either case does not deprive the officer or magistrate of that protection which is conferred upon those who act in execution of it. But where there is a total absence of authority to do any part of that which is done, the party doing the act is not entitled to that protection. (*a*)

Length of notice.

By 5 & 6 Vict. c. 97, s. 4, in all cases where notice of action is necessary, one calendar month is to be sufficient.

What it should contain.

The notice should set forth the substantial ground of complaint, and specify the time and place of the commission of the act complained of. (*b*) It should also state that an action will be brought. (*c*)

It is not necessary, however, to name all the persons meant to be made parties to the action, nor to express whether it is intended to be brought against several persons jointly, or against one person only. (*d*) A reference to a wrong statute has been held to be immaterial. (*e*)

Where unnecessary.

An action may (*semble*) be brought without notice where its principal object is to restrain an immediate injury, although damages are also claimed. (*f*)

(*a*) *Cook* v. *Leonard*, 6 B. & C. 351.

(*b*) *Breese* v. *Jerdein*, 4 Q. B. 585.

(*c*) *Mason* v. *Birkenhead Commissioners*, 6 H. & N. 72.

(*d*) *Bax* v. *Jones*, 5 Pr. 168.

(*e*) *Macgregor* v. *Galsworthy*, 1 C. & K. 8.

(*f*) *Flower* v. *Local Board of Low Leyton*, 5 Ch. D. 347, C.A.

Limitation.

Several of these protective enactments provide that no action shall be brought except within a given time. Limitation.

An action is deemed to be commenced from the issue of the writ—that is, from the sealing thereof. (*a*)

Tender of Amends.

Most of these Acts also provide that the defendant may at any time after action brought tender a sum of money by way of amends, and that in case such sum be not accepted by the plaintiff in satisfaction of his claim, that the same may be paid into Court, and pleaded by the defendant in bar of such action. It is also provided in some of the statutes that such payment into Court shall have the same effect in law "as in other actions where defendants are allowed to pay money into Court." (*b*) Amends.

Where the defendant denies liability, the effect of such payment is:—(*c*) Payment into Court.

(*a.*) The plaintiff may accept it—in which case the action, except as to costs, will be stayed.

(*b.*) The plaintiff may refuse to accept it, in which case, if plaintiff proceeds with the action and succeeds, he may take the fund so paid in in satisfaction, *pro tanto*, of his judgment. If he fail, the defendant will be entitled to be repaid the amount and the general costs. (*d*)

Payment into Court is *semble* not now allowed in actions of slander where liability is denied. (*e*)

(*a*) *Original Hartlepool Company* v. *Gibb*, 5 Ch. D. 719; Order v. r. 11.

(*b*) *Vide, e.g.*, 8 & 9 Vict. c. 109, s. 22, *ante*, p. 210.

(*c*) Order XXII. r. 6.

(*d*) *Goutard* v. *Carr*, 53 L. J. Q. B. 55.

(*e*) Annual Practice, 1886-7. p. 330.

Venue.

Venue.

The majority of these statutes provide that the action shall be tried in the county in which the fact complained of was committed. This has not been interfered with by the Judicature Acts. (*a*)

The rule as to venue appears to apply only to such acts as the officer might, at the date of the statute conferring the right to venue, have been called upon to perform. (*b*)

Pleading.

Pleading.

The defendant is allowed in most cases to plead the payment into Court in bar of the action (where there has been tender of amends), together with the general issue (*c*), and in a few cases any other plea by leave of the Court.

Evidence.

Evidence for plaintiff.

The evidence for the plaintiff is in the majority of these protective statutes confined to the facts "set forth and contained" in the notice of action, and in a few cases proof of service of the notice is absolutely essential to a verdict. (*d*)

For defendant.

The defendant is permitted under the plea of the general issue to give "the Act and the special matter in evidence."

Omnia præsumuntur contra spoliatorem.

It should be here observed that the fabrication or withholding of evidence will render the maxim *Omnia præsumuntur contra spoliatorem* applicable to the case. (*e*)

(*a*) *See* Order xxxvi. r. 1. (*b*) *Bryson* v. *Russell*, 33 W. R. 34.

(*c*) This plea puts the whole matter in issue; *vide* Archbold, 19th ed. p. 149.

(*d*) *Vide*, *e.g.*, 39 & 40 Vict. c. 36, s. 269; *ante*, p. 133.

(*e*) Broom Leg. Max., 5th ed. 939, 942, and see *ante*, p. 294.

Verdict.

In certain cases the jury is directed for whom to find the verdict. (*a*) Verdict.

Damages.

The plaintiff in certain cases is only entitled to nominal damages, *e.g.* where there is probable cause for the act committed. (*b*) Damages.

Costs.

The question of costs is important. It will be seen on reference to the statutes recited above that the costs are frequently dealt with by the same clause which confers the protection. In some cases they will follow the event. In others no costs will be allowed against the defendant unless the judge certifies his approbation of the action and the verdict. (*c*) Costs

By 30 & 31 Vict. c. 142, s. 10, Any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a superior Court may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the Court in which the action is brought shall have power to make an order that, unless the plaintiff shall within a time to be therein mentioned give full security for the defendant's costs to the satisfaction of one of the masters of the said Court, or satisfy the judge that he has a cause of action fit to be prosecuted in a

(*a*) See, *e.g.*, 39 & 40 Vict. c. 36, s. 270, *ante*, p. 135.
(*b*) 7 & 8 Geo. 4, c. 53, s. 119, *ante*, p. 136.
(*c*) *Vide*, *e.g.*, 24 & 25 Vict. c. 97, s. 71, *ante*, p. 210.

Superior Court, all proceedings in the action shall be stayed; or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both the parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed by a memorandum signed by them that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the superior Court shall be allowed according to the scale in use in such latter Court.

WARRANTS.

A warrant is a written authority under the hand and seal of a justice or other officer authorized by law to issue the same, commanding the person entrusted with the execution thereof to arrest a person charged with having committed some offence therein specified, or to do some particular act or thing in relation to the said specified offence. (*a*) Warrants.

Warrants are, when regarded as to their legal effect, of two kinds.

(1.) Warrants of superior Courts acting according to the course of the common law.

(2.) Warrants of magistrates or others acting by special statutory authority, and out of the course of the common law.

When an officer is acting under a warrant of the first kind, it is a complete protection to him so long as he keeps himself within the limits of the warrant, for "he ought not to examine the judicial act of the Court whose servant he is, nor exercise his judgment touching the validity of the process in point of law, but is bound to execute it, and is therefore protected by it." (*b*) Liability of officer when acting under.

With regard, however, to warrants of the second kind a different rule prevails. They may be examined by the officer before execution, and if not within the jurisdiction

(*a*) This definition does not apply to the Speaker's warrant, *vide ante*, p. 8. Any warrant which purports to relate to an unknown offender, or to an offence not yet committed is void, being contrary to the resolution of the House of Commons cited, *ante*, p. 138.

(*b*) *Turner* v. *Fellgate*, 1 Lev. 95; *Cotes* v. *Michill*, 3 Lev. 20.

of the person issuing it, he may refuse to obey it. Here he will be liable, not only if he exceeds it, but also if he executes it strictly, if the warrant prove to be bad. The law of principal and agent above cited applies in this case, and the principal (that is, the person issuing the bad warrant) is liable although the agent (that is, the officer executing it) is not thereby discharged.

The best exposition of the principles here stated will be found in the judgments of Mr. Justice Coleridge, Lord Chief Justice Denman and Baron Parke in the Queen's Bench and the Exchequer Chamber respectively in the case of *Howard* v. *Gosset.* (*a*)

Howard v *Gosset.*

Mr. Justice Coleridge there delivered himself to the following effect:—

Coleridge, J.

At common law I take the test to be where the defect in a warrant goes to the jurisdiction of the authority issuing it. If the magistrate had no jurisdiction or if a want of jurisdiction appears on the face of the warrant, the officer was not bound to obey and is answerable. I find the law thus stated and illustrated by Willes, C.J., in *Morse* v. *James.* (*b*) "It has always been holden that a constable may justify under a justice's warrant in a matter wherein the justice had a jurisdiction though the warrant be never so faulty: but that if a justice of the peace make a warrant to a constable to arrest a man in an action of debt, such warrant will not justify the constable, because he was not obliged to obey it and must take notice at his peril that it was in a matter concerning which the justice had no jurisdiction." The expression "though the warrant be never so faulty," is too strong and general to be quite accurate. The justice of the peace has jurisdiction to cause the apprehension of

(*a*) 10 Q. B. 359. (*b*) Willes, 122, 128.

a party charged on oath with the commission of a misdemeanour: yet if the christian name of the party be left in blank and no reason stated for the omission but only an imperfect description of the individual as H., the son of Geo. H., it has been decided by all the judges that resistance would be lawful and the killing of the constable not murder. (*a*) Now it cannot be contended that the constable was bound to execute what the party might lawfully resist even to the death, and the ground on which the constable's justification can alone be put, the act itself being *primâ facie* illegal, is that a lawful authority commanded him and therefore made it his duty to do it. Coleridge, J.

Lord Coke in the 2nd Institute considers the matter of the requisites to make a good warrant in the commentary on Magna Charta, c. 29, pp. 52, 53, 54. Here he is treating expressly of imprisonment lawful or unlawful as that may depend on the goodness or badness of the warrant. One of the requisites to make it good he asserts to be the statement of the cause on its face. Among his reasons, is the impossibility of the Court dealing with the case on the return of the *habeas corpus* unless the cause of the imprisonment appear, and he states that the Petition of Right has now made an end of that question. That statute, it will be remembered, recites the grievance that divers subjects had of late been imprisoned "without any cause shewed," and provides against it for the future. Having shewn what is an unlawful imprisonment in this among other respects he goes on to remedies, and among them enumerates the action of false imprisonment, not making any distinction, it should seem, between the magistrate who issues, and the officer who executes the warrant.

(*a*) *R.* v. *Hood*, 1 Mo. C. C. 281.

Lord Hale, in 1 P. C. 580, states that "a general warrant, upon the complaint of a robbery, to apprehend all persons suspected, and bring them before, &c., was ruled void, and false imprisonment lies against the officer executing it."

Understood in one and that the most reasonable sense, the test of jurisdiction is the safest and most generally applicable that can be suggested, the jurisdiction, namely, to arrest *upon the facts stated on the warrant.* If the warrant in the shape in which it is given to the officer is such that the party may lawfully resist it, or if taken on it will be released on *habeas corpus*, it is a warrant which in that shape the magistrate had no jurisdiction to issue, which therefore the officer need not have obeyed, and which at common law, on the principle above laid down by Willes, C.J., will not protect him against the action of the party injured. Where a cause is expressed but imperfectly, the officer may not be expected to judge as to the sufficiency of the statement, and then, if the subject-matter be within the jurisdiction of the magistrate, he may be bound to execute, and, as a consequence, be entitled to protection. Where no cause is expressed, there is no question as to the want of jurisdiction.

Denman, C.J.

Lord Chief Justice Denman said:—

At common law, every warrant must speak for itself, and must shew two things—a good cause for depriving the party of his liberty, and some lawful period for his confinement. "The warrant" (says Lord Coke, (*a*)), "containing a lawful cause, ought to have a lawful conclusion." This is repeated by Lord Hale and all the text-writers; and it is well established by numerous authorities. Lord Chief Justice Holt asserted this principle in *Bracy's Case* (*b*); so did Lord Ellenborough in

(*a*) 2 Inst. 52. (*b*) 1 Ld. Ray. 99.

Ex parte Goff (*a*), the whole Court in Lord Tenterden's time in *Groome* v. *Forester* (*b*); and the Court of Exchequer in *Daniell* v. *Phillips.* (*c*) In the last-mentioned case Parke, B. (*d*), expresses himself in the very words of Lord Chief Justice Holt: "The cause of commitment ought to be certainly stated, to the end that the party may know for what he suffers, and how he may regain his liberty." "And if it be not, it is not only a ground for discharging the party, but the warrant is void and no justification in an action of false imprisonment."

From this ancient and indisputable principle it follows that a bad warrant cannot be eked out by the more regular and formal conviction; or rather, indeed, it is the same principle.

I apprehend that the goodness of a warrant with respect to its contents is wholly independent of the authority from which it proceeds. However dignified and powerful the body which sends forth process, that process must be consistent with itself and with the law, in order to defend the officer who acts upon it. . . The magistrate is as absolute while exercising his jurisdiction as an Act of Parliament can make him.

In the Exchequer Chamber, Baron Parke, delivering the judgment of the Court, expressed himself as follows:—

Parke, B. On what principle is the instrument to be construed? Is it to be examined with the strictness with which we look at the warrants of magistrates or others acting by special statutory authority and out of the course of the common law, or is it to be regarded as the mandate or writ of a superior Court acting according to the course of the common law?

(*a*) 3 M. & S. 213.
(*b*) 5 *Ib.* 314.
(*c*) 1 Cro. M. & R. 662.
(*d*) P. 673.

Parke, B. In the case of special authorities given by statute, the justices or others acting out of the ordinary course of the common law, the instruments by which they act, whether warrants to arrest, commitments or orders, or convictions or inquisitions, ought, according to the course of the decisions, to shew their authority on the face of them by direct averment or reasonable intendment. Not so the process of superior Courts acting by the authority of the common law. On the argument of the case of *Peacock* v. *Bell* (*a*), the rule as to pleading is well expressed thus: "The rule for jurisdiction is that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so." "Nothing shall be intended to be within the jurisdiction of an inferior Court but that which is expressly alleged."

Writs issued by a superior Court not appearing to be out of the scope of their jurisdiction are valid, and of themselves, without any further allegation, a protection to all officers and others in their aid acting under them; and that although they be on the face of them irregular as a *capias* against a peeress (*b*); or void in form as a *capias ad respondendum* not returnable the next term (*c*); for the officers ought not to examine the judicial act of the Court whose servants they are, nor exercise their judgment touching the validity of the process in point of law, but are bound to execute it and are therefore protected by it. (*d*)

Warrants of justices. Warrants of justices are, it must be remembered, specially dealt with by 24 Geo. 2, c. 44 (*vide ante*, p. 202).

Other officers issuing warrants. Other officers issuing warrants and orders under

(*a*) 1 Saund. 74. (*b*) *Countess of Rutland's Case*, 6 Rep. 54 A.
(*c*) *Parsons* v. *Lloyd*, 3 Wils. 341.
(*d*) *Turner* v. *Fellgate*, 1 Lev. 95; *Cotes* v. *Michill*, 3 Lev. 20.

"special statutory authority" are the Revenue Commissioners (*a*), the Secretary of State (*b*), the Commissioners of Police (*c*), and the Coroner. (*d*)

(*a*) *Vide e.g.*, *ante*, p. 113.
(*b*) *Vide e.g.*, *ante* p. 138.
(*c*) *Ante*, p. 184.
(*d*) *Ante*, p. 260.

Civil Proceedings.

(A.) Breach of Duty.

Action for Damages.

Action for damages.

This action lies whenever one person has suffered at the hands of another a legal wrong (*injuria*). The two leading categories of wrongs are known as *injuria* and *damnum* respectively. *Injuria* is any wrong of which the law takes cognizance. *Damnum* is any wrong the compensation for which has some appreciable value. It follows that *injuria* does not necessarily include *damnum*, nor *damnum injuria*, but both may concur in the same set of circumstances.

Injuria and *damnum* can only exist in the following ways: Either *injuria* and *damnum* together, or *injuria* alone, or *damnum* alone. Whenever there is *injuria* and *damnum* together, or *injuria* alone, there is that which furnishes good ground for an action for damages. But when *damnum* exists alone there is no such ground. Expressed in technical language these propositions may be thus stated:—*Injuria et damnum* is actionable, *injuria sine damno* is actionable, *damnum sine injuria* is *not* actionable.

Trespass on land and treading down corn is an illustration on the first. Trespass is an *injuria*. There is also actual loss (*damnum*) by the destruction of the corn. Of the second kind, *Ashby* v. *White* (2 Lord Raym. 953) is a good example, where an action was held to lie against a returning officer for refusing to take a man's vote when tendered, although the candidate for whom he desired to vote was successful. Of the third kind a moral or social

wrong is an instance, of which the Courts decline to take cognizance although the party may have suffered actual appreciable loss (*damnum*).

Where a person undertakes a public office, he is bound to perform the duties of the office, and if he neglects or refuses so to do and an individual in consequence sustains injury therefrom, that lays the foundation for an action for damages to recover compensation for the injury so sustained. (*a*)

(*a*) *Sutton* v. *Johnstone*, 1 T. R. 493.

(B.) Excess of Power.

Assault and Battery.

Assault and battery.

An assault is an attempt or offer to beat another without touching him, as if one lifts up his cane or his fist in a threatening manner at another, or strikes at but misses him. (*a*)

A battery (which includes an assault) is the unlawful beating of another—the least touching of another's person wilfully or in anger (*b*), and this whether with the person or with any missile or weapon. (*c*)

The fact of the assault being unintentional does not make it less an assault. (*d*) But it may be urged in mitigation of damages. (*e*)

In the following cases it was held that an assault had been committed.

Where A. was advancing in a threatening attitude with an intention to strike B., so that his blow would have almost immediately reached B. if he had not been stopped: though at the particular moment when A. was stopped he was not near enough for his blow to take effect. (*f*)

An examination by medical men, in pursuance of an order of a magistrate, of the person of a female in custody upon the charge of concealing the birth of her illegitimate child. (*g*)

(*a*) 3 Bla. Com. 120.

(*b*) *Ib.*

(*c*) *Russell* v. *Horne*, 8 A. & E. 602.

(*d*) *Covell* v. *Laming*, 1 Camp. 477.

(*e*) *James* v. *Campbell*, 5 C. & P. 373.

(*f*) *Stephens* v. *Myers*, 4 C. & P. 349.

(*g*) *Agnew* v. *Jobson*, 14 Cox, C. C. 625.

Riding after a person and obliging him to run away into a garden to avoid being beaten. (*a*)

One of the marshals of the City of London whose duty it was on the day of a public meeting in the Guildhall to see that a passage was kept for the transit to their carriages of members of the corporation and others, directed a person in the front of the crowd at entrance to stand back, and on being told by him that he could not for those behind him, struck him immediately in the face, saying that he would make him. It was *held* that in so doing the marshal exceeded his authority and that he should have confined himself to the use of pressure and should have waited a short time to afford an opportunity for removing the party in a more peaceable way. (*b*)

Where plaintiff being in defendant's workshop and refusing to quit when desired, the defendant and his servants surrounded him and threatened to break his neck if he did not go out, whereupon the plaintiff, apprehensive of violence, departed. (*c*)

A threat to shoot a person, coupled with the act of presenting a loaded firearm at him, although it is half-cocked. (*d*)

In the following cases it was held that no assault had been committed.

Where A. comes up to attack B,, and B. puts himself into a fighting attitude to defend himself. (*e*) No assault

Where "the defendant presented a pistol loaded with gunpowder, ball and shot, at the plaintiff and threatened

(*a*) *Martin* v. *Shoppee*, 3 C. & P. 373.

(*b*) *Imason* v. *Cope*, 5 C. & P. 193.

(*c*) *Read* v. *Coker*, 13 C. B. 850.

(*d*) *Osborne* v. *Veitch*, 1 F. & F. 317.

(*e*) *Moriarty* v. *Brooks*, 6 C. & P. 684.

and offered therewith to shoot the plaintiff and blow out his brains." If the plaintiff at the time he presented the pistol used words shewing that it was not his intention to shoot the plaintiff. (*a*)

Where A. seized the bridle of the horse on which B. was riding and B., after a request to desist struck A. with his riding-whip, using no more force than was necessary to obtain his release. (*b*)

Where a police constable was wholly passive, and merely obstructed the entrance of a person into a room as any inanimate object would. (*c*)

As regards threatening gestures, if the parties at the time the gestures are used are so far distant from each other that immediate contact is impossible, there is no assault. (*d*)

Procedure.

Procedure.

Where the assault has been heard and determined by justices, a certificate by such justices of conviction or acquittal is a bar to all further proceedings. (*e*)

To justify a battery the defendant must shew that there was an unlawful resistance on the part of the plaintiff to the lawful acts of the defendant. (*f*)

A plaintiff declared for an assault in seizing and laying hold of him, pulling and dragging him about, striking him, forcing him out of a field, into and through a pond and then imprisoning him; a plea justifying the assault, seizing, laying hold, putting, dragging was held no sufficient answer to the entire charge in the declaration. (*g*)

(*a*) *Blake* v. *Barnard*, 9 C. & P. 626.

(*b*) *Rowe* v. *Hawkins*, 1 F. & F. 91.

(*c*) *Jones* v. *Wylie*, 1 C. & K. 257.

(*d*) *Cobbett* v. *Grey*, 4 Ex. 744.

(*e*) 24 & 25 Vict. c. 100, ss. 44, 45.

(*f*) *Gregory* v. *Hill*, 8 T. R. 299.

(*g*) *Bush* v. *Barker*, 4 M. & Scott, 588.

Assault and battery. Procedure.

An assault *ex vi termini* was held to exclude consent, therefore a plea of leave and license to a declaration charging an assault amounts to not guilty. (*a*)

Moll. man. imposuit was held an answer to a battery. (*b*)

In an action for assaulting, beating, and ill-treating plaintiff, and beating, and striking her down with a truncheon, whereby her thigh was broken, the plea was that defendant was possessor of a house, and plaintiff was making disturbance therein. *Moll. man. imposuit,* to turn her out: *Held,* no justification of striking and wounding with a truncheon. (*c*)

Moll. man. imposuit, in order to turn plaintiff out of defendant's house, where she continued against his will, was *held* no answer to a charge against defendant for striking plaintiff repeated blows, and with great force and violence several times knocking her down. (*d*)

A. and B. were charged jointly and in one count with assault, battery, and imprisonment of the plaintiff. A. pleaded justification as a justice of the peace. Trespasses, including an assault, battery and imprisonment, were proved to have been done by A. and B. jointly, and afterwards on the same day, another imprisonment but without an actual battery done by A. alone, to which last the justification alone applied: *Held,* that no new assignment was necessary and that the judge was right in telling the jury to confine their attention to the joint trespass only. (*e*)

Defendant assaulted plaintiff, wrenched a stick from his

(*a*) *Christopherson* v. *Barr,* 11 Q. B. 473.

(*b*) *Titley* v. *Foxall,* 2 Ld. Ken. 308.

(*c*) *Oakes* v. *Woad,* 2 M. & W. 791.

(*d*) *Gregory* v. *Hill,* 8 T. R. 299.

(*e*) *Kearney* v. *Tottenham,* 15 W. R. 1020.

hand, and with the stick and with his fists gave plaintiff many violent blows. Plea as to the assaulting plaintiff, &c., *son assault demesne: Held,* that the plea sufficiently justified the battery with the stick as well as the assault with it. (*a*)

In an action of assault and battery to which the defendant pleaded *son assault demesne,* plaintiff it was held might, under a replication joining issue on the plea and without replying excess, shew that although he struck the first blow defendant was guilty of excess. (*b*)

The plea of *son assault* admits the assault. (*c*)

In an action for an assault though defendant has not pleaded a justification, he may extract evidence in mitigation of damages in the examination of plaintiff's witnesses. (*d*)

It was *held* competent to the defendant to give evidence of an assault by the plaintiff without a plea of *son assault demesne.* (*e*)

Upon issue taken on a plea of *son assault demesne* it was held necessary to prove an assault commensurate with the trespass sought to be justified. (*f*)

Limitation

This action must be commenced "within four years next after the cause of such action, and not after." (*g*)

(*a*) *Blunt* v. *Beaumont,* 2 C. M. & R. 412.
(*b*) *Dean* v. *Taylor,* 11 Ex. 68.
(*c*) *Hay* v. *Kitchen,* 1 Wils. 171.
(*d*) *Moore* v. *Adam,* 2 Chit. 198.
(*e*) *Syers* v. *Chapman,* 2 Q. B. (N. S.) 438.
(*f*) *Reece* v. *Taylor,* 4 N. & M. 470.
(*g*) 21 Jac. 1, c. 16, s. 3.

False Imprisonment.

False imprisonment.

Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority. (*a*)

Actual contact is not necessary to constitute an imprisonment. Any restraint put upon the freedom of another by shew of authority or force, is sufficient to constitute an imprisonment, so that if a person is restrained from leaving a room or going out of a house without the presence of a constable, this infringement of his personal liberty will constitute an imprisonment. (*b*)

The forcibly preventing a party from proceeding in a particular direction, *e.g.* along a public footway, was *held* not an imprisonment in law. (*c*)

In an action by A. against B., B. cannot defend himself under a magistrate's warrant against C., although A. was charged with felony before the magistrate and was the person against whom the warrant was intended to issue. (*d*)

Though it may be the subject of a trespass in the magistrate to grant an illegal warrant, yet an action on the case may be supported against the person who causes and procures such warrant to issue, if it is done maliciously and without reasonable and probable cause. (*e*)

(*a*) 3 Bla. Com. 127.

(*b*) *Warner* v. *Riddiford*, 4 C. B. (N. S.) 206.

(*c*) *Bird* v. *Jones*, 7 Q. B. 742.

(*d*) *Haye* v. *Bush*, 2 Scott, N. R. 86.

(*e*) *Elsie* v. *Smith*, 1 D. & R. 97.

Procedure.

Procedure.

A justification of an imprisonment on the ground that the plaintiff had committed felony, and an abandonment of the plea at the trial or a failure to prove it, are evidence of malice and a great aggravation of the original wrong; but a justification of a false imprisonment, on the ground that a felony had been committed and that the defendant had reasonable and probable cause to suspect that the plaintiff had been guilty of it, is very different. Such a justification is in the nature of an apology for the defendant's conduct. (*a*) The onus of justifying was held to rest on the defendant: therefore in trespass for causing the plaintiff to be apprehended under a justice's warrant it was held that he might maintain the action without producing the warrant. (*b*) The onus lies on the defendant to plead and prove affirmatively the existence of reasonable cause as his justification; whereas in an action for malicious prosecution, plaintiff must allege and prove affirmatively its non-existence. (*c*) Where the declaration stated that defendant arrested plaintiff, and that plaintiff had been detained in custody until he was discharged by reason of the defendant not having declared against him, and that the defendant might have procured judgment in that suit if he had thought fit, but that he afterwards and without reasonable or probable cause maliciously arrested him a second time for the same cause of action, without leave of the judge: *Held*, that the declaration was good. (*d*)

(*a*) *Warwick* v. *Foulkes*, 12 M. & W. 509.

(*b*) *Holroyd* v. *Doncaster*, 11 Moore, 441.

(*c*) *Hicks* v. *Faulkner*, 46 L. T. 127.

(*d*) *Heywood* v. *Collinge*, 1 P. & D. 202.

A plea which professes to justify several assaults and false imprisonments laid in separate counts must shew distinct occasions upon which the defendant was justified in committing each particular trespass. (*a*)

False imprisonment. Procedure.

It is necessary to shew in pleading the causes of suspicion with certainty, in order that the Court may judge of their reasonableness, and using the term suspicion will not aid what is not necessary to be averred. (*b*) Proof must be given of circumstances from which the judge and jury may decide whether there was or was not a restraint or a detention of the person, and it is not enough for witnesses to swear that they considered the plaintiff was in custody and thought that he was under restraint, nor is it enough to shew that the defendant at a police office stood before the plaintiff and said—"You cannot go away till the magistrate comes," if it appears that he relinquished that attitude and went to another part of the office before the plaintiff had made any attempt to depart. (*c*) Where in an action against the serjeant-at-arms of the House of Commons for forcibly and with the assistance of the military breaking into the house of the plaintiff and arresting him there, being justified under the Speaker's warrant to arrest the plaintiff, a member of the House, for a breach of privilege, to which there was a new assignment of excess in using military force, it was *held* that evidence of acts of violence of the mob committed in parts adjacent though out of view and hearing of the plaintiff in his house, if they appeared to be connected with the same purpose as actuated those about the house, might be admitted to shew the danger and diffi-

(*a*) *M'Curday* v. *Driscoll*, 1 C. & M. 6187.
(*b*) *Mure* v. *Kaye*, 4 Taunt. 34. (*c*) *Cant* v. *Parsons*, 6 C. & P. 501.

False imprisonment. Procedure.

culty of executing the warrant by force against the plaintiff in his own house without the aid and protection of the military. (*a*)

If A. imprisons B., and in continuance of the imprisonment delivers him into the charge of C., who keeps him in custody, the acts and declarations of C are evidence against A. (*b*) Where a plea justifying the trespasses states that the plaintiff committed a felony, the jury must try that question in the same way as if sitting in a criminal Court trying plaintiff for the offence itself; and if a witness who admits that he stole similar property at the same time is called to sustain the plea, though he is not exactly in the situation of an accomplice, yet it seems that his testimony ought to receive some confirmation. (*c*) In an action for false imprisonment on a criminal charge the defendant, it was held, cannot cross-examine as to the bad character of the plaintiff, nor as to previous charges made against him. (*d*)

In an action for giving plaintiff into custody on a charge of stealing oysters: it was *held* that the defendant for proving *bona fides* could not give evidence of prior conviction of a third party for the same offence, unless he knew of it at the time of giving into custody. (*e*) Reasonable and probable cause of suspicion was held good evidence in mitigation of damages under not guilty. (*f*) A plaintiff cannot recover damages in respect of having been detained beyond a certain hour, whereby he missed

(*a*) *Burdett* v. *Coleman*, 14 East, 163.

(*b*) *Powell* v. *Hodgetts*, 2 C. & P. 432.

(*c*) *Richards* v. *Turner*, Car. & M. 414.

(*d*) *Downing* v. *Butcher*, 2 M. & Rob. 374.

(*e*) *Thomas* v. *Russell*, 9 Ex. 764.

(*f*) *Perkins* v. *Vaughan*, 4 M. & G. 989.

an opportunity of being taken into an employment, the damages being too remote. (*a*)

In the calculation of damages in an action for maliciously holding to bail, plaintiff is entitled to recover not merely the taxed costs, but the costs as between attorney and client. (*b*)

This action must be commenced "within four years next after the cause of such action, and not after." (*c*) Limitation.

(*a*) *Hoey* v. *Felton*, 11 C. B. (N. S.) 142.
(*b*) *Sandbach* v. *Thomas*, 1 Stark. 306.
(*c*) 21 Jac. 1, c. 16, s. 3.

Malicious Prosecution. (a)

Malicious prosecution.

A malicious prosecution is a prosecution instituted by one person against another without reasonable and probable cause, and which has failed.

Prosecuting a person with any other motive than bringing a guilty party to justice was held a malicious prosecution, as *e.g.* where a prosecution is instituted against a person with a view of terrifying parties from the commission of some prevalent offence. (*b*)

An action lies for maliciously obtaining or executing a warrant to search a house for smuggled goods though none are found. (*c*)

In an action in a County Court A., by means of purjured evidence, led the judge to believe that B., also a witness in the Court on the same decision, had committed perjury, whereupon the judge directed that B. should be indicted, and bound over A. to prosecute him at the assizes where B. was acquitted: *Held*, that an action for malicious prosecution lay against A. at the suit of B. (*d*)

Counsel's opinion is of no avail to a man who has instituted an unfounded and malicious prosecution. (*e*)

The necessary ingredients in this action are—

I. Malice.

I. *Malice*, which may be either express or implied.

(*a*) By s.58 of the County Courts Act, 1846, this action does not lie in the County Court. But by s. 23 of 19 & 20 Vict. c. 108, it may be there taken by agreement.

(*b*) *Stevens* v. *Midland Counties Railway Company*, 10 Ex. 352.

(*c*) *Boot* v. *Cooper*, 1 T. R. 535.

(*d*) *Fitzjohn* v. *Mackinder*, 9 C. B. N. S. 505.

(*e*) *Hewlett* v. *Crutchley*, 5 Taunt. 283.

If in the opinion of the judge there was no reasonable or probable cause for the prosecution, the jury may from that fact alone infer malice. (*a*)

Scandalous charges and accusations made by the defendant against the plaintiff in connection with the prosecution are evidence of malice. Any statements or declarations made by the defendant tending to shew that he was actuated by spite and ill-will in instituting the prosecution, are of course evidence of malice. (*b*)

It is no answer to an action for malicious prosecution to shew that the indictment preferred against the plaintiff was not sustainable in point of law, for a bad indictment serves all the purposes of malice by putting the party to expense and exposing him, but no purpose of justice in bringing the party to punishment if he were guilty. (*c*)

Where a person having lost a bill of exchange, which he supposed to have been stolen, went before a magistrate and related the circumstances of the loss, and the magistrate granted his warrant to apprehend A. on a charge of having "feloniously stolen and carried away" the bill of exchange (language which the complainant did not use when he laid the information), and upon subsequent investigation of the case it turned out to be no felony. *Held* that an action would not lie for maliciously procuring the magistrate to grant his warrant; to sustain the averment of malice the charge must be wilfully false. (*d*)

In an action for malicious prosecution the question of malice was never in terms left to the jury. (*e*)

(*a*) *Busst* v. *Gibbons*, 30 L. J. Ex. 75.

(*b*) *Mitchell* v. *Williams*, 11 M. & W. 217.

(*c*) *Wicks* v. *Fentham*, 4 T. R. 248.

(*d*) *Cohen* v. *Morgan*, 6 D. & R. 8.

(*e*) *Payne* v. *Revans*, 9 W. R. 693.

II. Want of reasonable and probable cause.

II. *Want of Reasonable and Probable Cause.*

In *Hicks* v. *Faulkner* (*a*) Hawkins, J., said :—

"I should define reasonable and probable cause to be an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the prisoner charged was probably guilty of the crime imputed. There must be—

(1) An honest belief of the accuser in the guilt of the accused.

(2) Such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to the conclusion.

(3) Such secondly-mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe.

(4) The circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused."

Although the question of reasonable and probable cause was held to be an inference to be drawn by the judge from the facts undisputed or found, yet, the test is not what impression the circumstances mentioned make on the mind of a lawyer, but whether the circumstances warranted a discreet man in instituting and following up the proceedings. (*b*)

Information received from persons apparently respect-

(*a*) 8 Q. B. D. 167.

(*b*) *Kelly* v. *Midland Great Western Railway of Ireland Company*, 7 Ir. C. L. 8.

able and believed to be credible is sufficient evidence of reasonable and probable cause for a prosecution. (*a*)

The disbelief of the party making a charge before a magistrate is some want of probable cause, notwithstanding other evidence may have shewn that there was *primâ facie* probable cause for making the charge. (*b*)

Reasonable and probable cause may be shewn by evidence which would make a *primâ facie* case such as would justify a criminal charge, although it might be insufficient to convict, and although it might require confirmation by further evidence not disclosed or discovered by the prosecutor until after he had given the plaintiff into custody. (*c*)

Similarity of handwriting was held not *per se* and without circumstances probable cause for preferring a charge of forgery against a person whose handwriting is like that of a forged instrument. (*d*)

The question of reasonable and probable cause may be entirely for the judge or for the jury, according to the evidence in each particular case. (*e*)

III. *Prosecution determined in Plaintiff's Favour.*

III. Prosecution determined in plaintiff's favour.

A plaintiff to recover in an action for the malicious issue of process, must have had judgment in his favour in that process. (*f*)

An action lies for malicious prosecution though the plaintiff is acquitted on a defect in the indictment. (*g*)

If a party is indicted for felony, though he is acquitted

(*a*) *Chatfield* v. *Comeford*, 4 F. & F. 1008.

(*b*) *Broad* v. *Ham*, 5 Bing. N. C. 722.

(*c*) *Dawson* v. *Vansandau*, 11 W. R. 516.

(*d*) *Clements* v. *Ohrly*, 2 C. & R. 686.

(*e*) *James* v. *Phelps*, 11 A. & E. 837.

(*f*) *Taylor* v. *Ford*, 29 L. T. 392.

(*g*) *Wicks* v. *Fentham*, 4 T. R. 247.

without calling witnesses, he cannot maintain an action for a malicious prosecution if his acquittal was the result of deliberation and the evidence was sufficient to cause the jury to pause. (*a*)

The prosecution being non-proved is not of itself evidence of malice. (*b*)

IV. Damage.

IV. That he has sustained *Damage* by reason of the prosecution. A count for maliciously indicting plaintiff for an assault could not be supported without proof of some consequential injury sustained by him. (*c*)

Procedure.

Procedure.

In a declaration for malicious prosecution, it was held not necessary to state that there was an information; it is sufficient to state that the defendant procured a warrant to be issued; but if the declaration states that the defendant made information on oath, and that upon that information the magistrate granted the warrant, the information must be proved, and a recital of it in the warrant is not sufficient. (*d*)

A declaration for maliciously indicting and procuring the plaintiff to be indicted is sustained, although it appears that the defendant preferred the indictment unwillingly and solely because he was bound over to do so, if it appears that he was himself the cause of his being bound over by originally making a malicious charge before a magistrate. (*e*)

It was held necessary to state in a declaration every

(*a*) *Smith* v. *Macdonald*, 3 Esp. 7.

(*b*) *Sinclair* v. *Eldred*, 4 Taunt. 7.

(*c*) *Freeman* v. *Arkell*, 3 D. & R. 669.

(*d*) *Gregory* v. *Derby*, 8 C. & P. 749.

(*e*) *Dubois* v. *Keates*, 3 P. & [illegible]367.

allegation proper to support the action, namely, that the defendant falsely, maliciously, and without any reasonable or probable cause, caused the plaintiff to be indicted, and to state the trial and acquittal. (*a*)

Where the bill has not been found, an action cannot be supported without evidence of express malice as well as the want of probable cause. (*b*)

The Court will not permit a defendant to plead that he had probable cause to indict together with not guilty. The plea of not guilty puts in issue the fact of prosecution and the want of probable cause. (*c*)

It lies on the plaintiff to give evidence of malice in the defendant, either expressed or to be collected from circumstances shewing plainly the want of probable cause, and the malice is not to be implied from the mere proof of the plaintiff's acquital for want of the prosecutor's appearing when called. (*d*)

In an action for maliciously procuring plaintiff to be arrested on a charge of larceny, defendant cannot give evidence to shew that the plaintiff's character was suspicious, and that his house had been searched on former occasions. (*e*)

Where the defendant gives evidence of probable cause a witness may be asked whether plaintiff was not a man of notoriously bad character. (*f*)

This action must be commenced "within four years after the cause of such action and not after." (*g*) Limitation.

(*a*) *Carman* v. *Truman*, 1 Bro. P. C. 101.

(*b*) *Byne* v. *Moon*, 1 Marsh. 12.

(*c*) *Cotton* v. *Brown*, 4 N. & M. 831.

(*d*) *Purcell* v. *Macnamara*, 9 East, 361.

(*e*) *Newsam* v. *Carr*, 2 Stark. 69.

(*f*) *Rodriguez* v. *Tadmire*, 2 Esp. 721.

(*g*) 21 Jac. 1, c. 16, s. 3.

Slander (*a*)

Slander.

Slander is a false and malicious defamation of character expressed verbally tending to injure the reputation of another and expose him to public ridicule, hatred or contempt. (*b*)

An action for slander is not maintainable without proof of actual damage caused thereby to the plaintiff, *except* where the words impute the commission of a crime, unfitness for society, or misconduct in business.

Words merely conveying suspicion will not sustain an action for slander. (*c*)

But words imputing a crime are actionable, though they describe it in vulgar language and not in technical terms (*d*), and the offence imputed need not be an indictable offence. (*e*)

However honestly the party who publishes a libel believes it to be true, if it is untrue in fact the law implies malice unless the occasion justifies the act, and whether the occasion justifies the act is a question of law. (*f*)

A publication may be a libel on a private person which would not be any libel on a person in a public capacity, but any imputation of unjust or corrupt motives is equally libellous in either case. (*g*)

Allegorial terms of a defamatory character or of evil

(*a*) By s. 58 of County Courts Act, 1846, this action does not lie in the County Court. But by s. 23 of 19 & 20 Vict. c. 108 it may be there taken by agreement.

(*b*) Broom, Com. Law, 731.

(*c*) *Simmons* v. *Mitchell*, 6 Ap. Cas. 156.

(*d*) *Colman* v. *Goodwin*, 3 Dougl. 90.

(*e*) *Webb* v. *Beavan*, 11 Q. B. D. 609.

(*f*) *Darby & Ouseley*, 1 H. & N. 1.

(*g*) *Parmiter* v. *Coupland*, 6 M. & W. 105.

import, such as imputing to a person the qualities of a "frozen snake" in the fable are libellous *per se* without innuendoes to explain their meaning. (*a*)

Repetition of injurious rumour is actionable unless the occasion be privileged, and it is no justification that the rumour existed. (*b*)

Where slanderous words are not actionable *per se*, no action will lie against the original utterer of the slander for damages resulting from a repetition of it unauthorized by him. (*c*)

It is not an answer to an action for slander for a defendant to shew that he had heard it from another, and named the person at the time, without shewing that he believed it to be true, and that he spoke the words on a justifiable occasion. (*d*)

If a defendant at the time of speaking the slander gave up the name of the person from whom he heard it, this is no justification; but if he did this, and at the trial proves that he did in fact hear the slander from that person, it will go in mitigation of damages. (*e*)

Privileged Communications.

Privileged communications.

Privileged communications were held to comprehend all statements made *bonâ fide* in the performance of a duty, or with a fair and reasonable purpose of protecting the interests of the person making them, and the onus of proving malice lies on the plaintiff. (*f*) A communication made *bonâ fide* upon any subject-matter in which the

(*a*) *Hoare* v. *Silverlocke*, 12 Q. B. 625.

(*b*) *Watkin* v. *Hall*, L. R. 2 Q. B. 396.

(*c*) *Parkins* v. *Scott*, 1 H. & C. 153.

(*d*) *M'Pherson* v. *Daniel*, 10 B. & C. 263.

(*e*) *Bennett* v. *Bennett*, 6 C. & P. 586.

(*f*) *Somerville* v. *Hawkins*, 10 C. B. 583.

party communicating has an interest or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains criminating matter which without this privilege would be slanderous and actionable. (*a*) Charges and communications which would otherwise be slanderous are protected if made *bonâ fide* in the prosecution of an inquiry into a suspected crime. It is for the jury to say whether the circumstances warranted the charge made by the defendant, whether it was made *bonâ fide*, or before more persons than was necessary, or in language stronger than the occasion justified. (*b*)

Words spoken by a medical officer to the steward of a public school, to the effect that the plaintiff, a butcher who supplied it with meat, sold bad meat, was held privileged in the absence of malice. (*c*)

A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the inquiry on which he is called as a witness. A statement as to another matter made to justify the witness in consequence of a question going to the witness's credit has reference to the inquiry within this rule. (*d*)

Procedure.

Procedure.

Where a plea of justification contains several charges and the prosecutor replies generally denying the whole, the prosecutor is entitled to a verdict, unless the defendant proves to the satisfaction of the jury the truth of all the material allegations; and if the defendant fails to

(*a*) *Harrison* v. *Bush*, 5 El. & Bl. 344.

(*b*) *Primrose* v. *Lawrence*, 11 Ad. & E. 282.

(*c*) *Humphreys* v. *Stillwell*, 2 F. & F. 590.

(*d*) *Seaman* v. *Netherclift*, 2 C. P. D. 83.

prove the truth of all the matters charged, it is no ground for a new trial, that with respect to some of those upon which the jury gave a verdict against the defendant, their finding was against the weight of evidence. (*a*) A plea stating the libellous matter complained of "is true in substance and effect," was held to mean that it is true in every particular, and if the defendant does not prove such statement to be true, the plea is not proved, although he proves facts of the same description. (*b*) In an action for slander, where the statement of claim alleged that one, at the request and by the direction of the defendant, uttered the slander complained of, the plaintiff was ordered to give particulars of the names of the persons to whom, and of the place at which such slander was uttered. (*c*) Evidence was rightly rejected where the particular facts and circumstances sought to be proved were not stated or referred to in the statement of defence. (*d*) A communication being shewn to be privileged, it was held to lie on the plaintiff to prove malice in fact: in order to entitle him to have the question of malice left to the jury he need not shew circumstances necessarily leading to the conclusion that malice existed, or such as are inconsistent with its non-existence, but they must be such as raise a probability of malice, and be more consistent with its existence than with its non-existence. (*e*)

This action must be commenced "within two years next after the words spoken, and not after." (*f*) Limitation

(*a*) *Reg.* v. *Newman*, Dears. C. C. 85.

(*b*) *Weaver* v. *Lloyd*, 4 D. & R. 230.

(*c*) *Bradbury* v. *Cooper*, 12 Q. B. D. 94.

(*d*) *Scott* v. *Sampson*, 8 Q. B. D. 491.

(*e*) *Somerville* v. *Hawkins*, *ubi sup.*

(*f*) 21 Jac. 1, c. 16, s. 3.

Trespass to Chattels.

Trespass to chattels.

Every direct forcible injury or act disturbing the possession of goods without the owner's consent is a trespass: and if it amount to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner, it then becomes a wrongful conversion. (*a*)

Trespass was held the proper remedy for taking goods under an irregular distress since 11 Geo. 2, c. 19, s. 19. (*b*)

An action is maintainable upon the equity of 2 W. & M. sess. 1, c 5, s. 2, for selling goods seized under a distress for rent where a tender of the rent and expenses has been made before the sale and within five days of the seizure although after impounding. (*c*)

An action will lie for an excessive distress, and leaving a man in possession, although the goods of the tenant are not so completely removed from his control as to prevent him from carrying on his business. (*d*)

A tenant tendering his rent after distress taken, but before it is impounded or removed, may maintain trespass for a subsequent removal of the distress. (*e*)

A party making a wrongful distress for two causes as to one of which he is entitled to notice of action is thereupon liable in trespass as to the other. (*f*)

A person who has moved the goods of another without a lawful right to do so, even to put them out of the way, is liable for the natural consequences of the removal. (*g*)

(*a*) Underhill, 3rd ed. p. 238.
(*b*) *Wallace* v. *King* 1 H. Bl. 13.
(*c*) *Johnson* v. *Upham*, 2 El. & Bl. 250.
(*d*) *Baylis* v. *Fisher*, 4 M. & P. 790.
(*e*) *Virtue* v. *Beasley*, 1 M. & Rob. 21.
(*f*) *Lamont* v. *Southall*, 7 D. P. C. 569.
(*g*) *Walker* v. *Sharman*, 3 F. & F. 259.

In an action for excessive distress express malice is not necessary to be proved to support the declaration. (*a*)

Procedure.

Procedure.

The plea of not guilty by statute pleaded under 11 Geo. 2, c. 19, s. 21, in an action for excessive distress puts in issue not only the matter of justification, but the tenancy and ownership of the goods. (*b*)

It is not incumbent on a plaintiff in an action for an excessive distress to prove the precise amount of rent due, as stated in the declaration, the substantial allegation being that more was distrained for than was actually due. (*c*)

In an action for a vexatious and excessive distress, the plaintiff having received the taxed costs of his replevin on the distress, was held not entitled to recover as damages the extra costs occasioned to him by the replevin. (*d*)

The question is what the goods seized would have sold for at a broker's sale. If it is excessive the plaintiff is entitled to recover the fair value of them. (*e*)

Where a defendant had wrongfully seized plaintiff's goods, but had not removed them from the house in which the plaintiff resided, and another wrongdoer, against the will of the defendant, seized the goods while thus in the defendant's possession, the plaintiff was held entitled in trespass to recover as damages from the defendant the amount she had been forced to pay to the second wrongdoer to redeem the goods from him. (*f*)

(*a*) *Field* v. *Mitchell*, 6 Esp. 71.
(*b*) *Williams* v. *Jones*, 11 A. & E. 643.
(*c*) *Sells* v. *Hoare*, 8 Moore, 451.
(*d*) *Grace* v. *Morgan*, 2 Bing. N. C. 534.
(*e*) *Wells* v. *Moody*, 7 C. & P. 59.
(*f*) *Keene* v. *Dilke*, 4 Ex. 388.

In an action for taking goods under irregular legal process, where special damage is alleged and claimed but not proved, plaintiff is thereby entitled at least to nominal damages, or to such substantial damages as the jury thinks adequate. (*a*)

Limitation. This action must be commenced "within four years after the cause of such action, and not after." (*b*)

(*a*) *Doss* v. *Doss*, 14 L. T. 646. (*b*) 21 Jac. 1, c. 16, s. 3.

Trespass to Realty.

Trespass to realty.

Every unauthorized entry upon or direct interference with another's land is a trespass for which an action lies without proof of actual damage. (*a*)

If a man abuse an authority given him by the law he becomes a trespasser *ab initio*. *Contra* of an authority given by the party. The abuse is good matter of replication. Mere nonfeasance does not amount to such abuse as makes a man a trespasser *ab initio*. (*b*)

If there is an abuse of an authority by which the party becomes a trespasser *ab initio*, the plaintiff is entitled to recover damages as well for the part or injury which would have been justified if there had been no abuse as for the part which is directly caused by the abuse. (*c*)

The rule that a party cannot be made a trespasser by relation is only applicable where the act complained of was lawful at the time. (*d*)

Trespass will lie for continuing on the premises and disturbing plaintiff's possession after the time allowed by law. (*e*)

Semble, that trespass lies for a wrongful continuance in possession after a distress made. (*f*)

Defendant obtained a search warrant against the plaintiff which was executed by a county constable instead of the parish officer to whom it was addressed. *Held*, that trespass was the proper form of action. (*g*)

(*a*) Underhill, 3rd ed. p. 190.

(*b*) *Six Carpenters' Case*, 8 Coke, 146 a.

(*c*) *Kerbey* v. *Denby*, 1 M. & W. 341.

(*d*) *Thorpe* v. *Stallwood*, 5 M. & G. 760.

(*e*) *Winterbourne* v. *Morgan*, 2 Camp. 117.

(*f*) *Ladd* v. *Thomas*, 4 P. & D. 9.

(*g*) *Freegard* v. *Barnes*, 7 Ex. 827.

A police constable hearing a noise in a public-house at one o'clock in the night, entered the house, the door being open: *Held*, not a trespass. (*a*)

An attempt to eject by force a person having a legal title to land brings the person who makes it within the provision of the statute against forcible entry (5 Ric. 2, c. 8). (*b*)

Forcible entry.

Damages cannot be recovered for such forcible entry, which is an indictable offence. (*c*)

In an action for breaking and entering a house, the allegation *vi et armis* does not imply a forcible entry. (*d*)

Procedure.

The defendant may justify under a sufficient legal process if he had it in fact at the time, although he declared then that he entered for another cause. (*e*)

In an action for breaking the outer door and entering the plaintiff's house the defendant may give in evidence under not guilty that he entered by virtue of a warrant of distress for rent and was turned out of possession, whereupon he committed the trespasses complained of. (*f*)

Trespass for breaking and entering the plaintiff's dwelling-house may be well laid to have been done under a false charge and assertion that the plaintiff had stolen property in her house, *per quod* she was injured in her credit, for that is laid only as a matter of aggravation, and the jury may give damages for the trespass as it is aggravated by such false charge. (*g*)

In an action for breaking and entering plaintiff's house,

(*a*) *Reg.* v. *Smith*, 6 C. & P. 136.

(*b*) *Laws* v. *Telford*, 13 Cox, C. C. 226.

(*c*) *Beddall* v. *Maitland*, 17 Ch. D. 174.

(*d*) *Harvey* v. *Bridges*, 3 D. & L. 55.

(*e*) *Crowther* v. *Ramsbottom*, 7 T. R. 654.

(*f*) *Eagleton* v. *Gutteridge*, 11 M. & W. 465.

(*g*) *Bracegirdle* v. *Orford*, 2 M. & S. 77.

and expelling him therefrom, the breaking and entering are the gist of the action, and the expulsion is merely aggravation; therefore a justification as to the breaking and entering will cover the whole declaration. (*a*)

A party who insists upon remaining on the land of another against his will, and therefore *primâ facie* against right, ought to shew all the circumstances which make such possession lawful, and abridge the just rights of property. (*b*)

In an action for breaking and entering a house and taking and selling goods the plaintiff is not entitled to recover the costs of setting aside a warrant of attorney and all subsequent proceedings under which the trespass was committed. (*c*)

The true criterion of damages was held to be the whole injury which the plaintiff has received from the joint act of trespass. (*d*)

This action must be commenced "within four years next after the cause of such action, and not after." (*e*) Limitation.

(*a*) *Taylor* v. *Cole*, 3 T. R. 292.

(*b*) *Hayling* v. *Okey*, 8 Ex. 531.

(*c*) *Holloway* v. *Turner*, 6 Q. B. 928.

(*d*) *Clark* v. *Newsam*, 1 Ex. 131.

(*e*) 21 Jac. 1, c. 16, s. 3.

Criminal Proceedings.

(A) Breach of Duty.

Breach of duty.

Cases of breaches of duty occurring in this connection are those which arise where the officer has failed to perform some obligation which he owes to the State as distinguished from the individual. It would be improper therefore to include them in this treatise.

The majority of statutes which confer powers, include penalties for breaches of public duty by the officers on whom the powers are conferred.

As to the question when these proceedings are open to an individual, *see* Attachment—Sheriff. (*a*)

(*a*) *Ante*, p. 44.

(B) Excess of Power.

Assault and Battery. (*a*)

Assault and battery.

An assault is an attempt to offer with force and violence to do a corporal hurt to another, as by striking at him with or without a weapon, or presenting a gun at him at such a distance to which the gun will carry, or pointing a pitchfork at him standing within reach of it, or by holding up one's fist to him, or by any or such like act done in an angry threatening manner. From hence it clearly follows that one charged with assault and battery may be found guilty of the former and not guilty of the latter. But every battery includes an assault; therefore on an indictment of assault and battery in which the assault is ill-laid, if the defendant be found guilty of the battery, it is sufficient. (*b*)

Any injury whatsoever, be it ever so small, being actually done to the person of a man in an angry, revengeful, rude or insolent manner, as by spitting in his face or anyway touching him in anger or violently jostling him out of the way, are batteries in the eye of the law. But it is no battery to lay one's hand gently on another whom an officer has a warrant to arrest. (*c*)

If a person present a pistol purporting to be loaded at another and so near as to have been dangerous to life if it had gone off, this is *semble* an assault, whether the pistol be or be not in fact loaded. (*d*)

If parish officers cut off the hair of a pauper in the

(*a*) *Vide* 24 & 25 Vict. c. 100, s. 42.

(*b*) Hawk. P. C. cap. xv. § 1.

(*c*) *Ib.* § 2.

(*d*) *R.* v. *St. George*, 9 C. & P. 483.

poor-house by force and against the will of such pauper, this is an assault, and if it be done as a matter of degradation and not with a view to cleanliness, that will be aggravation and go to increase the damages. (*a*)

Though one cannot justify a battery by *son assault demesne* by pleading it in the indictment, yet he may give it in evidence upon not guilty and he may be thereupon acquitted. (*b*) A battery cannot be justified by an officer unless there was resistance in the party. (*c*)

(*a*) *Forde* v. *Skinner*, 4 C. & P. 239.
(*b*) Per Holt, C.J.:—*R.* v. *Cotesworth*, 6 Mod. 172.
(*c*) *Williams* v. *Jones*, Ca. temp. Hard. 301.

Extortion.

This offence consists in the taking of money by any officer by colour of his office, either where none is due at all, or not so much as is due, or where it is not yet due. (*a*) Extortion.

At common law it is severely punishable at the king's suit by fine and imprisonment.

If a sheriff's officer admit a prisoner to bail upon an agreement to receive a certain sum when the prisoner should pay to a third person another sum, it is extortion. (*b*)

So is it to arrest a man in order to obtain a release for him. (*c*) Or to obtain money from a prisoner by a goaler by any colourable means. (*d*)

There can be no accessories in this offence. (*e*)

On an indictment for taking more than the sum allowed for brokerage it is not necessary to prove that the defendant took the exact sum laid in the indictment. It is for the jury to say whether the excess were really taken as a fair charge or not. (*f*)

A collector of post-horse duty demanded of A. a sum of money alleging that A. had let out horses for hire without payment of the duty. A. denied that he had done so and gave the collector a promissory note for £5, the amount of which after it became due was paid by A. to the collector, who handed it to his principal, the farmer of the post-horse duties. It was held that this was extortion and that the collector having paid the money over to his principal made no difference. (*g*)

(*a*) 1 Hawk. P. C. 418, § 1.
(*b*) *Stokesbury* v. *Smith*, 2 Burr. 924.
(*c*) *Williams* v. *Lyons*, 8 Mod. 189.
(*d*) *R.* v. *Colvin*, 8 Mod. 226. (*e*) *R.* v. *Loggen*, 1 Str. 73.
(*f*) *R.* v. *Gillham*, 6 T. R. 265. (*g*) *R.* v. *Huggins*, 4 C. & P. 247.

False Imprisonment.

False imprisonment.

This is a misdemeanour at common law.

Every restraint of the liberty of a free man is an imprisonment (*a*) though it be in the high street or elsewhere and he be not put into any prison or house. (*b*)

If a sheriff's officer having a writ against A. tells him that he has a writ against him upon which A. says, "Very well, I will come to you immediately," and shortly afterwards makes his escape without having been touched by the officer, it is no arrest. (*c*) It does not, however, follow that an arrest cannot be made without touching the person, for if a bailiff comes into a room and tells the defendant he arrests him and locks the door, that is an arrest, for he is in the custody of the officer. (*d*)

If a magistrate's warrant be shewn by a constable who has the execution of it to the person charged with the offence, and he thereupon without compulsion attend the constable to the magistrate, and after examination be dismissed, this is not such an arrest as will support trespass and false imprisonment. (*e*) *Sed quære* because where a constable directed by the defendant to take the plaintiff on a charge of felony told the latter, "You must go with me," whereupon the plaintiff without further compulsion attended the constable, it was *held* that this was a sufficient imprisonment to support an action, and that the plaintiff failing in proving the imprisonment as laid, might recover on the count for a common assault. (*f*)

(*a*) 2 Inst. 482.
(*b*) Fitz. Bar. 301.
(*c*) *Russen* v. *Lucas*, Ry. & M. 26.
(*d*) *Williams* v. *Jones*, Ca. temp. Hard. 301.
(*e*) *Arrowsmith* v. *Le Mesurier*, 2 B. & P. 211.
(*f*) *Pocock* v. *Moore*, Ry. & M. 321.

Inciting to Commit an Offence.

Inciting to commit an offence.

This is indictable at common law. (*a*)

The offence of soliciting and inciting a man to commit a felony is, where no such felony is actually committed, a misdemeanour only, and not a felony under 24 & 25 Vict. c. 94. (*b*)

To solicit a servant to steal his master's goods is a misdemeanour, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done except the soliciting and inciting. Such offence is indictable at the sessions, having a tendency to a breach of the peace. (*c*) Inciting a person to commit a breach of the peace is therefore an offence within this category.

It is no defence that the servant purposely submitted himself to the incitement with intent to betray the inciter. (*d*)

An attempt to suborn a man to commit perjury is a misdemeanour. (*e*)

(*a*) See also 24 & 25 Vict. c. 94, s. 2.

(*b*) *R.* v. *Gregory*, L. R. 1 C. C. R. 77.

(*c*) *R.* v. *Higgins*, 2 East, 5.

(*d*) *R.* v. *Quail*, 4 F. & F. 1076.

(*e*) Referred to in *R.* v. *Scofield*, Cald. 397.

Malicious Prosecution.

Malicious prosecution (conspiracy).

Where a malicious prosecution is the result of a conspiracy it is an indictable offence. (*a*)

"By the common law, liberty of a man's mind and will how he should bestow himself and his means, his talents and his industry, is as much the subject of the law's protection as is that of his body. Therefore if two or more persons agreed to co-operate against that liberty of thought and freedom of will, they would be guilty of a conspiracy." (*b*)

A conspiracy is divisible into three heads:

(1.) Where the end to be attained is itself a crime.

(2.) Where the object is lawful but the means to be resorted to are unlawful.

(3.) Where the object is to do an injury to a third party, though if the wrong was inflicted by a single individual, it would be a wrong and not a crime. (*c*)

A conspiracy, though nothing be done in pursuance of it, is an offence. (*d*)

The indictment need not state the overt acts used to effect the intended mischief. (*e*)

It should be grounded rather on the common law than on the statute 21 Edw. 1. (*f*)

A conspiracy entered into with the object of ruining the plaintiffs, either personally or in their trade, is a conspiracy within the principle laid down in *R.* v. *Eccles* cited above. (*g*)

(*a*) 14 & 15 Vict. c. 100, s. 29.

(*b*) *Per* Bramwell, B.:—*R.* v. *Druitt*, 10 C. C. C. 592.

(*c*) *R.* v. *Parnell*, 14 Cox, C. C. 508.

(*d*) *R.* v. *Best*, *Ib.* 174.

(*e*) *R.* v. *Eccles*, 1 Leach, 274; *R.* v. *Kimmersley*, Stra. 193.

(*f*) 1 Hawk. P. C. c. 72, s. 2.

(*g*) *Mogul Steamship Co.* v. *McGregor*, 15 Cox, C. C. 740.

Malicious prosecution (conspiracy).

An indictment for conspiracy to indict for a capital offence is good although the word "falsely" is not added to the first charge of conspiracy, nor is the particular crime there specified, and although it is not laid that the party charged was acquitted of it. (*a*)

A plea attempting to justify one of the overt acts of conspiracy is bad, being no answer. (*b*)

To establish a conspiracy it is not necessary to prove any direct or immediate injury, or even to shew any specific overt act. (*c*)

On information for conspiracy, the fact of conspiring need not be proved, but may be collected from other circumstances. (*d*)

Individuals doing individual acts, but with a combined end previously determined on, is evidence of a conspiracy. (*e*)

All confederacies wrongfully to prejudice a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter, whether it be true or false, are illegal. (*f*)

Where persons were charged with combining to prosecute a man for robbery of which they knew he was innocent, in order to get into their possession the reward offered, it was held sufficient to establish a conspiracy. (*g*)

The gist of these offences consists in the unlawful agreement to injure a person by a false charge, whether the charge be of criminal acts or such only as may affect his reputation. (*h*)

(*a*) *R.* v. *Spragg*, 2 Bur. 993.

(*b*) *Gregory* v. *Brunswick* (*Duke*), 6 M. & G. 205.

(*c*) *R.* v. *Robinson*, 1 Leach, 37.

(*d*) *R.* v. *Parsons*, Black. 392.

(*e*) *R.* v. *Cope*, Stra. 144.

(*f*) 1 Hawk. P. C. c. 72, s. 2.

(*g*) *R.* v. *Macdaniel*, 1 Leach, 45.

(*h*) *Per* Lord Mansfield:—*R.* v. *Rispal*, Bla. 368

Malicious prosecution (conspiracy).

Where a fraud was committed and suspicion had fallen on W. as being in some way connected with D., the principal criminal, who had absconded, the persons defrauded instructed constables to watch W. so as to be able when the other evidence was ripe to arrest him. W. having applied for a criminal information against the constables on the ground that they were conspiring to extort money from him, it was *held* that there being *bonâ fide* instructions to the constables to watch W., on which they had acted without unduly harassing him, and there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted. (*a*)

(*a*) *Ex parte Wolf*, 28 J. P. 23.

Trespass to Realty.

Forcible Entry. "The King defendeth that none from henceforth make any entry into any lands and tenements but in case where entry is given by the law: and in such case not with strong hand, nor with multitude of people, but only with peaceable and easy manner; and if any man from henceforth do to the contrary and thereof be duly convicted, he shall be punished by imprisonment of his body and thereof ransomed at the King's will." (*a*) Forcible entry.

An entry by breaking the doors or windows whether any person be in the house or not, especially if it be a dwelling-house or where personal violence is done to the prosecutor or any of his family or servants or caretakers, or when it is accompanied with such threats of personal violence that it is calculated to prevent the prosecutor from defending his possession, is within the statute. (*b*)

A mere trespass is not sufficient.

There must be some shew of force calculated to prevent resistance. (*c*)

Where the party has no right of entry, all persons in his company, as well those who do not use violence as those who do, are equally guilty; but if he have a right of entry, then those only who use or threaten violence or actually abet those who do, are guilty. (*d*)

Where defendants broke and entered plaintiff's house to prevent him from murdering his wife, they were held justified. (*e*)

(*a*) 5 Ric. 2, c. 8. (*b*) Hawk. I. c. 64., ss. 20, 21, 26, 27.
(*c*) *R.* v. *Smyth*, 5 C. & P. 201. (*d*) 3 Bac. Abr. Forc. Ent. (B.)
(*e*) *Handcock* v. *Baker*, 2 B. & P. 260.

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